

THE Oklahoma Bar JOURNAL

Volume 78 ♦ No. 27 ♦ October 6, 2007

Education Law



ALSO INSIDE

- New Mentor Program Launched
- Board of Governors Nominees Profiled
- OBA Award Winners Announced
- Spotlight Winners Honored



Calendar of Events

OBA CLE Seminars

OCT. 12 – OKC

The Trial of an Employment Case
7 hrs. of MCLE credit,
including 0 hrs. of ethics
Oklahoma Bar Center
1901 N. Lincoln Blvd.

OCT. 12 – TULSA

**Tool Time for Creditor's Counsel: Judicial
Mortgage Foreclosures**
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OCT. 19 – OKC

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OCT. 19 – TULSA

A Century of Trial Basics
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OCT. 25 – OKC

**Introduction to Historic Preservation Law
in Oklahoma**
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OCT. 25 – TULSA

**Intensive Introduction to LLC Law,
Tax, and Practice**
8 hrs. of MCLE credit,
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OCT. 26 – OKC

A Century of Trial Basics
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OCT. 26 – TULSA

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online at
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or call
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October

Calendar of Events

OBA CLE Webcasts

OCT. 10

The Secret of Client Satisfaction: Keeping 'Em Happy (and Coming Back for More)

Jim Calloway, Director MAP,
Oklahoma Bar Association, Oklahoma
City, Noon, 1 Hr. MCLE, including
0 hours of ethics, \$50

OCT. 10

Retirement Plans and Probate: Issues for Native American Tribes

11:00 a.m., 3.5 Hrs. MCLE, including
0 hours of ethics, \$175

OCT. 16

Gain the Edge! Latz's Golden Rules of Negotiation: Part B

Martin E. Latz
1:00 p.m.
1 Hr. MCLE, including
0 hours of ethics, \$50

OCT. 17

Oklahoma's New Immigration Law

3 Hrs. MCLE, including
0 hours of ethics, \$150

OCT. 26

Prosecution & Defense of Money Laundering Cases Part 1: Master Advocate's Institute Series Money Laundering: Compliance and Case Management

Charles W. Blau, JD, Meadows, Owens,
Collier, Reed, Cousins & Blau, L.L.P.,
Dallas, 8:30 a.m.
4 Hrs. MCLE, including
0 hours of ethics, \$200

NOV. 7

Trial Tactics for the 21st Century

Robert Shapiro
1:00 p.m., 1 Hr. MCLE, including
0 hours of ethics, \$50

NOV. 14

Acrobat for Advanced Users: A Lawyer's Guide to Advanced Features of Adobe Acrobat 8 for Lawyers

David Masters
1:00 p.m., 1 Hr. MCLE, including
0 hours of ethics, \$50

NOV. 16

Health Care Litigation, Compliance and Liability

Charles W. Blau, JD, Meadows,
Owens, Collier, Reed, Cousins
& Blau, L.L.P., Dallas
9:00 a.m., 9.5 Hrs. MCLE, including
1 Hr. of ethics, \$350

NOV. 20

Negotiation Ethics: Winning Without Selling Your Soul Part B

Martin E. Latz
1:00 p.m., 1 Hr. MCLE, including
1 hour of ethics, \$50

NOV. 27

Trust Accounts: What's New and What's Not

Gina Hendryx, Ethics Counsel,
Oklahoma Bar Association,
Oklahoma City, Noon,
1 Hr. MCLE, including
1 hour of ethics, \$50

You may register
online at [http://
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October & November





OKLAHOMA FAMILY LAW

Melissa DeLacerda

The New Essential

This latest addition to the Oklahoma Practice Series compiles coverage of all applicable family law caselaw and statutes in a single volume. It offers practice tips, checklists and essential forms, as well as Child Support Guidelines. It is a "must have" for anyone who occasionally or consistently practices in this area.

About the author . . .

A former president of the Oklahoma Bar Association, Melissa DeLacerda has over 25 years of private practice experience, with heavy emphasis on family law. She received her J.D. with honors from the University of Tulsa College of Law.

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THEME:
EDUCATION LAW
EDITOR: RENÉE HILDEBRANT

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Mentoring: A New Beginning

By Stephen Beam

One of the things I have spoken and written about this year is mentoring. I have been fortunate in my legal career to be mentored by a number of very fine lawyers. My first mentor and to whom I owe so much is Joe McMillin. Fortunately for Joe and unfortunately for me, he moved to Palm Springs. Since then I have been fortunate to be able to call upon Pat Cornell, C.B. Graft, Denny Meacham and most especially the tough love mentoring of the late great Judge Ellis Cabaniss. Unfortunately, not all law school graduates these days are this fortunate.

One of my goals this year was to establish a mentoring program that actually works. I think this is occurring under the leadership of Jon Parsley. To understand where we are now, I think we need to look at the history of the OBA Mentoring Program. Unfortunately, it has not been pretty.

The OBA established a Mentoring Task Force and committee about 10 years ago. I am embarrassed to say it has been an absolute failure and only a few matches were made. There are a number of reasons for that. I don't think any of them were successful for any length of time. Over the past few years I have received a number of telephone calls from young lawyers asking to be paired with a mentor. Unfortunately, there was no active program to handle that situation. We were getting a number of mentoring applications completed and mailed to the bar center. For awhile no one knew where these people were getting the applications until we realized there was an application on the Web site. I apologize right now to anyone who has asked for a mentor or sent in an application and was ignored. That will not happen from this point forward.

A number of states have successful mentoring programs. Georgia even has a mandatory mentoring program. I think there is a real need for mentoring in Oklahoma.

I appointed Guyton attorney Jon Parsley to head a task force of people who were interested in this topic, and the task force began its work in January. I am pleased to report the Board of Governors accepted and approved the task force report last month.

The task force has developed a detailed mentoring manual. Rather than beginning with a full scale men-

toring program, which may have been a reason we were unsuccessful in the past, the task force is recommending a 50-match pilot program, called MentorMatch. The 50 matches will be initially made by the task force, and Jim Calloway, Management Assistance Program director, is the staff person who will assist with this project. The task force has recommended not just one-on-one mentoring but also group mentoring and other ways to make this a success.

I want to commend Jon and the task force for making this happen in a few short months — and at almost no cost to the OBA. Jon showed the leadership and vision in leading this task force that will make him an excellent OBA president.

The new program was rolled out at the New Lawyer Experience seminars in Tulsa and in Oklahoma City within the last few weeks. There's additional information about this most important program both in this bar journal issue and on the Web site at www.okbar.org. If you want to participate in this program either as a mentor or a protégée, please look for this information or contact Jon Parsley.

I am confident we now have a mentoring program that will be successful and of which we can all be proud. Most importantly, I think it will make a real difference in the lives of new lawyers for years to come, improve the quality of the practice of law in Oklahoma and make for a more professional and civil environment to practice law.

**New pilot
project
launched.**



Stephen Beam

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EVENTS CALENDAR

OCTOBER

- 10 **OBA Clients' Security Fund Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Micheal Salem (405) 366-1234
OBA Professionalism Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Steven Dobbs (405) 235-7600
- 12 **OBA Family Law Section Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
- 17 **OBA Diversity Committee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030
Ginsburg Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 18 **OBA Work/Life Balance Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280
- 19 **OBA Board of Governors Meeting**; Custer County; Contact: John Morris Williams (405) 416-7000
- 23 **Death Oral Argument, Wade Greely Lay – D-2005-1081**; 9 a.m.; Court of Criminal Appeals Courtroom
- 26 **Uniform Laws Committee Meeting**; 3:30 p.m.; Oklahoma Bar Association and Tulsa County Bar Center, Tulsa; Contact: Frederick H. Miller (405) 235-4100

NOVEMBER

- 7-9 **OBA 103rd Annual Meeting**; Sheraton Hotel, One North Broadway, Oklahoma City
- 8 **OBA Board of Governors Meeting**; Sheraton Hotel, One North Broadway, Oklahoma City; Contact: John Morris Williams (405) 416-7000
OBF Board of Trustees Meeting; Sheraton Hotel, One North Broadway, Oklahoma City
- 12 **Veteran's Day** (State Holiday)
- 13 **OBA Bar Center Facilities Committee Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 521-5845

For more events go to www.okbar.org/news/calendar.htm

The Oklahoma Bar Association's official Web site: www.okbar.org

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Standards of Liability for Teacher-Student and Peer Sexual Harassment Claims in the 10th Circuit

By Shelly A. Perkins

The 10th Circuit has significantly impacted sexual harassment jurisprudence by blurring the standards of liability for teacher-student and peer sexual harassment. Although a plaintiff's ability to succeed on a claim of sexual harassment against a school district should be easier to prove if the harassment was performed by a teacher than by a peer,¹ as I will show, two noteworthy decisions by the 10th Circuit seem to indicate the contrary.

The 10th Circuit's broad definition of actual notice in cases of peer sexual harassment may make it easier for plaintiffs to hold their peers liable, and, therefore, encourage claims against school districts. Additionally, in cases of sexual harassment by a teacher, the inclusion of an extra element in the standard of liability may make it harder for a plaintiff to prove school district liability. Furthermore, school officials are obligated to comply with a host of federal regulations pertaining to harassment and discrimination. As a result of the decisions by the 10th Circuit, educational institutions are confronted with uncertainty in clarifying actionable discrimination in either type of case. Title IX sexual harassment cases present challenges for both plaintiffs and defendants because of the unique educational environment in which they arise;² the victims are "public school students and [the harassment takes place in public schools, an] . . . environment necessary to care for, protect, and teach them."³ Although the

impact of decisions on both plaintiffs and school districts is uncertain, the ambiguity caused by these decisions undoubtedly concerns both parties.

This article will examine the tests established by the U.S. Supreme Court for determining sexual harassment in an educational institution and will discuss the impact which the interpretation and application of these tests in the U.S. Court of Appeals for the 10th Circuit will have on sexual harassment jurisprudence. Part I introduces Title IX of the Education Amendments of 1972⁴ and addresses relevant terms in applying these provisions, as well as the development of an implied and enforceable private right of action for monetary damages. Part II outlines the allegations needed to state a *prima facie* case for teacher-on-student sexual harassment originating in *Gebser v. Lago Vista Independent School District*,⁵ and Part III summarizes the *prima facie* case for student-on-student sex-

ual harassment developed in *Davis v. Monroe County Board of Education*.⁶ Part IV begins with an analysis of sexual harassment law in the 10th Circuit and suggests that the 10th Circuit has blurred the distinction between the standards of liability for claims of teacher-on-student and peer sexual harassment with its decisions in *Murrell v. School District No. 1, Denver, Colorado*⁷ and *Escue v. Northern Oklahoma College*.⁸ It includes a discussion regarding the significance of the 10th Circuit's interpretation and application of the Supreme Court tests and the impact these decisions will have on future litigation. Part V presents suggested actions school districts should take to avoid liability.

TITLE IX OF THE EDUCATION AMENDMENTS ACT OF 1972

Title IX of the Education Amendments Act of 1972⁹ states that, "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance."¹⁰ Title IX was modeled after Title VI of the Civil Rights Act of 1964¹¹ which prohibits an employer from making decisions about hiring, firing, or terms and conditions of employment on the basis of the employee's "race, color, religion, sex, or national origin."¹² The acts are very similar except that Title VI prohibits race and other types of discrimination in all programs receiving federal funding, while Title IX prohibits sex discrimination and applies only in education programs and activities.¹³ The two statutes also function in the same manner, essentially creating "a contract between the government and the recipient of funds" by "conditioning an offer of federal funding on a promise by the recipient not to discriminate."¹⁴

"The concept of a legal cause of action for sexual harassment arose in the employment context."¹⁵ Title VII of the Civil Rights Act of 1964¹⁶ explicitly "prohibits an employer from making decisions about hiring, firing, or terms and conditions of employment on the basis of

“ One important difference between the two acts is that the contract in Title VII is framed in terms of an ‘outright prohibition,’ rather than a condition of receiving federal funds as in Title IX. ”

the employee's sex (or race, color, religion or national origin)."¹⁷ "The statute was enacted in 1964 primarily to deal with problems of employment discrimination on the basis of race."¹⁸ One important difference between the two acts is that the contract in Title VII is framed in

terms of an "outright prohibition," rather than a condition of receiving federal funds as in Title IX.¹⁹ Moreover, Title VII applies broadly to all employers whether they receive federal funding or not in order to "eradicate[e] discrimination throughout the economy" and offers redress for persons injured through past discrimination in an attempt to make them whole.²⁰ Thus, Title VII is a mechanism of redress for victims of employment discrimination, while Title IX aims to protect individuals from sex discrimination by recipients of federal funds obtained for use in education programs and activities.²¹

Relevant Definitions

EDUCATIONAL INSTITUTION: Title IX is applicable to an "educational institution," which is defined as "any public or private pre-school, elementary, or secondary school, or any institution of vocational, professional, or higher education, except that in the case of an educational institution composed of more than one school, college, or department which are administratively separate units, such term means each such school, college, or department."²² The act does not apply to educational institutions controlled by religious organizations "if the application of this subsection would not be consistent with the religious tenets of such organization."²³

PROGRAM OR ACTIVITY: A "program or activity" includes all of the operations of "a department, agency, special purpose district, or other instrumentality of a [s]tate or local government;"²⁴ or, in the case of state and local government, includes the state and local governmental entities that distribute federal assistance as well as the departments or agencies within them to which assistance is extended.²⁵

RECIPIENT OF FEDERAL FUNDING: Under the Code of Federal Regulations, “federal financial assistance” means a grant, loan, contract, agreement or arrangement, but does not include a contract for insurance or guaranty.²⁶

Private Right of Action

After holding in *Cannon* that private actions under Title IX for sex discrimination were implied, the Supreme Court subsequently found that money damages were among the remedies available in such actions in *Franklin v. Gwinnett County Public School*.²⁷

IMPLIED RIGHT OF ACTION: In *Cannon*, a majority of the Supreme Court held that Title IX is enforceable through an implied private right of action for discrimination based on sex in an education program receiving federal funds.²⁸ The court began its analysis by applying four factors from its previous holding in *Cort v. Ash*²⁹ where the court concluded that Congress intended to make a remedy available to a special class of litigants under Title IX.³⁰ The four factors from *Cort* are as follows:

(1) whether the statute was enacted for the benefit of a special class of which the plaintiff is a member, (2) whether there is any indication of the legislative intent to create a private remedy, (3) whether implication of such a remedy is consistent with the underlying purposes of the legislative scheme, and (4) whether implying a federal remedy is inappropriate because the subject matter involves an area basically of concern to the States.³¹

Based upon the application of the four *Cort* factors, the court concluded that the petitioner in *Cannon* had a statutory right to bring her claim of sex discrimination under Title IX.³² The court stated, “[w]e have no doubt that Congress intended to create Title IX remedies comparable to those applicable under Title VI and that it understood Title VI as authorizing an implied private cause of action for victims of the prohibited discrimination.”³³ Important to the court’s reasoning were the simi-

larities of the language contained in both Title IX and Title VI when describing the benefited class.³⁴

In addition, although neither statute expressly mentions a private remedy for a person excluded from participating in a program receiving federal funds, both acts function in the same way by conditioning receipt of federal funds upon a promise by the recipient to refrain from discrimination.³⁵ Furthermore, by enacting Title IX, Congress, according to the court, sought to accomplish two objectives related to the objectives of Title IV: “avoid the use of federal resources to support discriminatory practices” and “provide individual citizens effective protection against those practices.”³⁶

MONETARY DAMAGES AVAILABLE: The Supreme Court found in *Franklin* that monetary damages were available for implied private rights of action for sexual harassment under Title IX.³⁷ The court reasoned that, “absent a clear direction to the contrary by Congress, the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute.”³⁸ According to Justice Scalia in his concurrence, after its decision in *Cannon* and other similar cases, the court’s analysis was that “[u]nless Congress expressly legislates a more limited remedial policy with respect to rights of action it did not know it was creating, it intends the full gamut of remedies to be applied.”³⁹ Therefore, in Scalia’s view, if a right of action can be judicially “implied,” so too can “categorical limitations upon their remedial scope.”⁴⁰

The court did not have to address the issue of whether monetary damages was an appropriate remedy, however, because following the decision in *Cannon*, Congress enacted the Rehabilitation Act Amendments of 1986.⁴¹ The Rehabilitation Act both withdrew the 11th Amendment immunity enjoyed by the states, and provided that, in suits against states, “remedies (including remedies both at law and in equity) are available for [violations of Title IX] to the same extent

“ The Supreme Court found in *Franklin* that monetary damages were available for implied private right of action for sexual harassment under Title IX. ”

as such remedies are available for such a violation in the suit against any public or private entity other than a state.”⁴² Thus, the issue of whether “judicially implied exclusion of damages” would be appropriate in sex discrimination cases became moot.⁴³ Justice Scalia reasoned the legislation served as both “a validation of *Cannon’s* holding”⁴⁴ as well as “an implicit acknowledgment that damages are available.”⁴⁵ The court “conclude[d], that Congress did not intend to limit the remedies available in a suit brought under Title IX”⁴⁶ and specifically declined to limit permissible remedies for sexual harassment cases to equitable remedies, such as back pay and prospective relief.⁴⁷

SEXUAL HARASSMENT OF STUDENTS BY TEACHERS

Prima Facie Case

In 1998, the Supreme Court in *Gebser* created a two-prong test to determine the presence of a *prima facie* case of sexual harassment of a student by a teacher. The court found that the school must have both actual notice of and be deliberately indifferent to the discrimination.⁴⁸

ACTUAL NOTICE: In *Gebser*, the Supreme Court held that actual notice of the harassment is required for monetary damages to be recovered in an action against a school for a case involving sexual harassment of a student by a teacher.⁴⁹ Actual notice must be made to “an official who at a minimum has authority to address the alleged discrimination and to institute corrective measures on the recipient’s behalf.”⁵⁰ Since Congress enacted Title IX pursuant to its authorization under the Spending Clause in Article 1 § 8 of the U.S. Constitution,⁵¹ the court found it necessary to closely examine whether it was proper to hold a recipient liable for a private action to recover monetary damages as a result of noncompliance with the provision.⁵²

Furthermore, the court stated a key concern in such a situation is to ensure “the receiving entity of federal funds [has] notice that it will be liable for a monetary award.”⁵³ The court reasoned that Congress would not have intended to impose liability on a recipient unaware of the discrimination.⁵⁴ “A central purpose for requiring notice to an ‘appropriate person’ and an opportunity for voluntary compliance before administrative enforcement proceedings begin is to avoid diverting education funding from beneficial uses where a recipient was unaware

of discrimination in its programs and is willing to institute prompt corrective measures,” the court explained.⁵⁵ Since actual notice is required to find a school district liable for sexual harassment, a teacher’s knowledge of his own actions is not relevant in the analysis.⁵⁶

DELIBERATE INDIFFERENCE: After determining that an appropriate official must have actual notice of the harassment, the Supreme Court then held that the official’s “response must amount to deliberate indifference to the discrimination.”⁵⁷ The court in *Gebser* found that the framework of the administrative enforcement portion of Title IX expressly assumes a deliberate refusal of an official to bring the recipient of funds into compliance.⁵⁸ Thus, one could be liable for causing the violation by failing to prevent a deprivation of federal rights.⁵⁹

Supreme Court Decision - Gebser v. Lago Vista Independent School District

Gebser was an eighth-grade student in middle school when she first met Waldrop, a high school teacher.⁶⁰ The two met when she joined a high school book discussion group he led, and where he allegedly made sexually suggestive comments to the students.⁶¹ Gebser then entered high school and was assigned to classes taught by Waldrop where he continued to make suggestive comments and began directing them toward Gebser.⁶² Later, Waldrop allegedly initiated sexual contact with Gebser, kissed and fondled her at her home, and engaged in sexual intercourse with her.⁶³ Although parents of two other students eventually complained to the high school principal about Waldrop’s comments during class, Gebser never reported her relationship with Waldrop to school officials.⁶⁴ The principal handled the complaint from the parents of the other students by holding a meeting at which Waldrop apologized to the parents and told them it would not happen again.⁶⁵ The principal then advised Waldrop to be careful about his comments.⁶⁶ The principal also reported the incident to the guidance counselor, but not to the superintendent, who was the district’s Title IX coordinator.⁶⁷ Several months later, a police officer discovered Gebser and Waldrop having sex and arrested Waldrop.⁶⁸ Waldrop was terminated and his teaching license was revoked.⁶⁹

The Supreme Court found that complaints received by the principal regarding Waldrop’s inappropriate classroom comments did not

constitute “actual notice” about Waldrop’s affair with Gebser. The court also rejected the notion that Waldrop’s knowledge of his own actions could amount to “actual notice” on the part of the school district.⁷⁰ Although the school district had neither implemented a grievance procedure for sexual harassment complaints nor issued a formal anti-harassment policy, the court still found the school district lacked actual notice of and was not deliberately indifferent to the sexual discrimination.⁷¹

STUDENT-ON-STUDENT SEXUAL HARASSMENT

Prima Facie Case

Davis v. Monroe County Board of Education set forth the elements of a claim under Title IX arising out of sexual harassment of one student by another. The court continued the requirements of actual notice of and deliberate indifference to the harassment required for claims involving teachers, and also found that the harassment must be so severe, pervasive and objectively offensive as to deprive the student of access to an educational opportunity or benefit.⁷²

ACTUAL NOTICE: In *Davis*, the court referred to its previous analysis and discussion in *Gebser* affirming the notice requirement in a cause of action for monetary damages, noting that Congress enacted Title IX pursuant to its authorization under the Spending Clause in Article 1 § 8 of the U.S. Constitution.⁷³ In addition, the court found that “a recipient of federal funds may be liable for damages under Title IX only for its own misconduct.”⁷⁴ The court further stated, “[t]he recipient itself must

“ Even where the harassment is not direct, the court explained, it may subject its students to harassment indirectly “[by] ‘caus[ing] [students] to undergo’ harassment or ‘mak[ing] them liable or vulnerable’ to it. ”



“exclud[e] [persons] from participation in...den[y] [persons] the benefits of, or... subjec[t] [persons] to discrimination under” its “program[s] or activit[ies]” in order to be liable.”⁷⁵

DELIBERATE INDIFFERENCE: In addition to requiring actual notice, the court in *Davis* held that damages lie against a school district in a case of student-on-student harassment under Title IX only where the response of the funding recipient [the district] to the known discriminatory acts amounts to deliberate indifference.⁷⁶ Even where the harassment is not direct, the court explained, it may subject its students to harassment indirectly “[by] ‘caus[ing] [students] to undergo’ harassment or ‘mak[ing] them liable or vulnerable’ to it.”⁷⁷ The court clarified that “school administrators continue to enjoy the flexibility they require [regarding disciplinary decisions] and that they will be deemed “deliberately indifferent” to acts of student-on-student harassment only where [their] response to the harassment or lack thereof is clearly unreasonable in light of the known circumstances.”⁷⁸

Substantial Control: Additionally, under the concept of deliberate indifference, a school’s liability for student-on-student sexual harassment is limited “to circumstances wherein the school as the recipient of federal funds exercises substantial control over both the harasser and the context in which the known harassment occurs.”⁷⁹ To be directly liable for its indifference, the school must have “the authority to take remedial action.”⁸⁰ Therefore, “misconduct [that] occurs during school hours and on school

grounds...is taking place 'under' an 'operation' of the funding recipient" because "the recipient retains substantial control over [both] the context in which the harassment occurs" and the harasser.⁸¹

SEVERE, PERVERSIVE AND OBJECTIVELY OFFENSIVE: To maintain a private damages action against a school district for student-on-student sexual harassment, "the plaintiff must [also] establish sexual harassment that is so severe, pervasive, and objectively offensive, and that so undermines and detracts from the victims' educational experience, that [they] are effectively denied equal access to an institution's resources and opportunities."⁸² However, the court cautioned other courts to be mindful of the fact that children may exhibit behavior "unacceptable among adults" and explained "damages are not available for simple acts of teasing and name-calling."⁸³

DEPRIVATION OF ACCESS: The court "reconcile[d] the general principle that Title IX prohibits official indifference to known peer sexual harassment with the practical realities of responding to student behavior"⁸⁴ by "limiting private damages actions to cases having a systemic effect on educational programs or activities."⁸⁵ Specifically, while a "drop off in grades provides necessary evidence of a potential link between the harassed student's education and the harasser's misconduct,"⁸⁶ "[s]tating a cognizable claim depends equally on the alleged persistence and severity of the harasser's actions and the [school] board's alleged knowledge and deliberate indifference."⁸⁷ The Supreme Court stated, "[t]he most obvious example of student-on-student sexual harassment capable of triggering a damages claim would thus involve the overt, physical deprivation of access to school resources."⁸⁸

Supreme Court Decision – Davis v. Monroe County Board of Education

In *Davis*, the Supreme Court found a public school district liable under Title IX for a claim of damages brought by the parent of a fifth grade student for its alleged indifference to complaints of sexual harassment by another student.⁸⁹ The parent alleged that the school board subjected her daughter to discrimination by completely failing to respond to complaints from the daughter and other female students about a peer's in-school conduct extending over a five-month period.⁹⁰ The conduct "was not only verbal, [but] it included numerous

acts of objectively offensive touching,"⁹¹ and occurred both in the classroom setting and during physical education class.⁹² "[The parent claimed] that the harassment had a concrete, negative effect on her daughter's ability to receive an education,"⁹³ and that the school board "made no effort whatsoever either to investigate or to put an end to the harassment."⁹⁴

The female student reported each event to a teacher, which resulted in three teachers having notice of the peer's conduct.⁹⁵ When the mother initially contacted the teacher, the teacher told her that the principal was aware of the incidents involving her daughter.⁹⁶ This peer was also allegedly harassing other female students and a group of them, including the female student in this case, attempted to discuss the situation with the principal.⁹⁷ However, the principal allegedly failed to take any disciplinary action against the male student at any time during the five months of his misconduct and there was no effort made to separate the male student from the female student.⁹⁸ In fact, "only after more than three months of reported harassment was the female student even permitted to change her classroom seat so that she was no longer seated next to [him]."⁹⁹ During the months of persistent harassment, the female student's grades fell and her father found a suicide note.¹⁰⁰ At the end of the school year, the male student "was charged with, and pled guilty to, sexual battery for his misconduct."¹⁰¹ On these facts, the Supreme Court concluded that the school district had actual notice of the misconduct, and that it was deliberately indifferent to it.

SEXUAL HARASSMENT IN THE 10th CIRCUIT

There have only been a handful of reported decisions in the 10th Circuit involving claims by public school students of sexual harassment by teachers. Recall that the Supreme Court did not announce the standard for liability in cases involving sexual harassment by a teacher until 1998 when it decided *Gebser*. A year later, the Supreme Court, in *Davis*, added to the standard set in *Gebser* and established the standard for liability in peer sexual harassment cases.

Since 1999, there have only been two cases decided by the 10th Circuit that involved a student victimized by sexual harassment: *Murrell v. School Dist. No. 1, Denver, Colorado*,¹⁰² which involved allegations of peer sexual

harassment and *Escue v. Northern Oklahoma College*,¹⁰³ which involved a sexual harassment claim against a teacher brought by a student. Even though *Murrell* and *Escue* are the only two reported cases from the 10th Circuit involving a student's sexual harassment claim under Title IX since the Supreme Court's decision in *Davis*, the 10th Circuit's interpretation and application of the tests from *Gebser* and *Davis* in these two cases are noteworthy because they suggest that the analysis applied by the 10th Circuit, and the results which may flow from this analysis, may not be altogether consistent with what the Supreme Court expected from its decision in *Davis*.

In *Davis*, the Supreme Court concluded in dictum that it is easier for a student to hold a school district liable under Title IX for harassment by a teacher, than it is for a student to hold the district liable for harassment by a peer.¹⁰⁴ The court distinguished *Davis* from *Gebser* and *Franklin* on the basis of which party was engaged in the harassment; in *Gebser* and *Franklin*, it was the teacher who engaged in harassment, in *Davis*, it was a student.¹⁰⁵ In explaining the distinction, the court stated, "[t]he relationship between the harasser and the victim necessarily affects the extent to which the misconduct can be said to breach Title IX's guarantee of equal access to educational benefits and to have a systemic effect on a program or activity."¹⁰⁶ However, the 10th Circuit's decisions in *Murrell* and *Escue* appear to signal that the reverse is true. As a result, there may no longer be a distinction between the standards of liability for a teacher-on-student claim of sexual harassment and a claim of peer sexual harassment in the 10th Circuit. Therefore, it may now be easier for a student to succeed in a claim of harassment by a fellow student than a claim where the harasser is a teacher.

Student-on-Student Sexual Harassment – The 10th Circuit's Decision in Murrell v. School Dist. No. 1, Denver, Colorado

After applying the *Davis* four-part test in *Murrell v. School Dist. No. 1, Denver, Colorado*,¹⁰⁷ the 10th Circuit reversed the district court's order dismissing petitioner's Title IX claim and found the school district liable for student-on-student harassment.¹⁰⁸ The student's mother, on her own behalf and as guardian ad litem for the developmentally and physically disabled female student, sued the school district under Title IX based on the school's alleged failure to

remedy sexual harassment and assault by a fellow male special education student.¹⁰⁹ At the time of enrollment, the mother informed the principal and two special education teachers that her daughter was sexually assaulted at her previous school and she was fearful the daughter was still at risk for such actions because of her disabilities; the school officials assured her that her daughter would be properly supervised.¹¹⁰ The female met a male special education student who had "significant disciplinary and behavioral problems which included engaging in sexually inappropriate conduct."¹¹¹ School officials became aware of the male student's behavior and that "[he] was engaging in aggressive, sexually inappropriate conduct toward the female student."¹¹² Although there were several incidents where the male student sexually assaulted and battered the female student, the teachers hid the conduct from the mother and, in one instance, tried to hide the evidence resulting from their sexual encounter.¹¹³ When the female student informed the teachers of another particular incident, they "encouraged her to forget that it happened at all."¹¹⁴ These repeated incidents of sexual assault and battery caused the female student to "engage in self-destructive and suicidal behavior . . . and to le[ave the] school and enter[] a psychiatric hospital."¹¹⁵

SIGNIFICANCE: What result will the broad application of actual notice in *Murrell* have on sexual harassment claims brought by students against teachers in the 10th Circuit? The decision in *Murrell* "centered on the issue of notice."¹¹⁶ In determining whether a school official who possessed the requisite control over the situation had actual knowledge of and was deliberately indifferent to the alleged harassment, the court "decline[d] simply to name job titles that would or would not adequately satisfy this requirement."¹¹⁷ However, the court concluded, "[b]ecause officials' roles vary among school districts, deciding who exercises substantial control for the purposes of Title IX liability is necessarily a fact-based inquiry."¹¹⁸ The court continued its analysis stating that, "*Davis* makes clear, however, that a school official, who has the authority to halt known abuse, perhaps by measures such as transferring the harassing student to a different class, suspending him, curtailing his privileges, or providing additional supervision, would meet this definition."¹¹⁹ Therefore, "[i]t is possible that the[] teachers would also meet the definition of 'appropriate persons' for the purposes

“Furthermore, teachers and school districts already face difficult choices in determining what type of conduct to report, particularly in primary and secondary school settings where they are faced with students who are young, immature and still developing their behaviors.”

of Title IX liability if they exercised control over the harasser and the context in which the harassment occurred.”¹²⁰ Thus, the 10th Circuit took “a broader definition of who would be an appropriate person to place on notice and would not rule out teachers,”¹²¹ making school districts vulnerable.

POLICY CONSIDERATIONS: The standard for liability in peer sexual harassment from *Davis* is generally more difficult to apply than the standard established in *Gebser* simply because of the additional two elements comprising the *Davis* test. However, suggesting that teachers could be considered “appropriate persons” to possess actual notice may actually make the standard easier to meet or at the least, more feasible. Circuit Judge Anderson addressed the broad language of the majority in his concurrence in *Murrell* by pointing out that the majority did not directly address the issue of whether a “single teacher’s inaction may in some circumstances be enough to trigger Title IX liability.”¹²² Therefore, according to Judge Anderson, since this issue was not before the court and was not answered in *Davis*, “it is still an open question.”¹²³ Such an interpretation may encourage a plaintiff to bring a claim of harassment by a peer because they may believe it would be easy to prove that a teacher had actual notice of the conduct considered sexual harassment.

The impact of such an expansive reading would add to the uncertainty and anxiety school officials, teachers in particular, face when addressing the issue of sexual harass-



ment. What if a student or group of students reported the conduct to the teacher but she did not observe the conduct firsthand? What other school officials or employees could qualify as having actual notice? The effect of such a broad analysis is illustrated by Justice Kennedy’s dissent in *Davis* where he states that, “while a school district cannot be held liable for a teacher’s sexual harassment of a student without notice to the school (or at least to the school principal), the district can be liable for a teacher’s failure to remedy peer harassment.”¹²⁴ Kennedy continues, “[t]he threshold for school liability, then, appears to be lower when the harasser is a student than when the harasser is a teacher who is an agent of the school.”¹²⁵

Furthermore, teachers and school districts already face difficult choices in determining what type of conduct to report, particularly in primary and secondary school settings where they are faced with students who are young, immature and still developing their behaviors. Justice Kennedy’s dissent in *Davis* addressed such concerns: “[t]he practical obstacles schools encounter in ensuring that thousands of immature students conform their conduct to acceptable norms may be even more significant than the legal obstacles.”¹²⁶ The unrealistic application of such a wide-reaching standard is evident as Justice Kennedy explains that, “[s]chool districts cannot exercise the same measure of control over thousands of students that they do over a few hundred adult employees.”¹²⁷

*Sexual Harassment of Students by Teachers –
The 10th Circuit's Decision in Escue v.
Northern Oklahoma College*

In *Escue v. Northern Oklahoma College*,¹²⁸ a female university student, Escue, alleged she was subjected to sexual harassment by a teacher, Finton, and the university failed to supervise him and adequately investigate his conduct, in violation of Title IX.¹²⁹ Finton allegedly touched Escue inappropriately and made “numerous sexual comments” both when they were alone and in front of her peers.¹³⁰ Escue and her father allegedly contacted the university president to “discuss the allegations and to express [her] concern that the allegations remain confidential.”¹³¹

University officials informed Finton of the allegations against him, “decided to transfer [Escue] out of one of [his] classes, permitted her to finish the other class as of March with her then-current grade, and began an investigation into her allegations.”¹³² “After its investigation, [the university] decided that it would terminate its relationship with Finton at the end of the spring semester.”¹³³ In addition to Finton’s contact with Escue, the university was aware of three other incidents involving Finton and other students: two students had lodged sexual harassment complaints against him and the president received an anonymous letter about Finton dating a student.¹³⁴ Although Finton received a verbal reprimand in each case, the university failed to place a record of any of the incidents in his personnel file and did not take any additional action against him.¹³⁵ During the course of litigation, Finton also admitted to another relationship with a student of which the university had no knowledge.¹³⁶ Escue appealed after the district court granted summary judgment to the university.¹³⁷

On appeal, the court held “that the district court properly granted summary judgment to [the university].”¹³⁸ The court concluded that the university did not have actual notice and was not deliberately indifferent to her allegations.¹³⁹ Specifically, the court reasoned, “the prior incidents were not sufficient to provide [the university] with actual knowledge that employing Mr. Finton put its student at substantial risk of being harassed,”¹⁴⁰ and “[b]ecause [its] response was not ‘clearly unreasonable in light of the known circumstances,’ [the university] was not deliberately indifferent to Ms. Escue’s harassment, as a matter of law.”¹⁴¹

SIGNIFICANCE: In *Escue*, the 10th Circuit set out the standard for liability in Title IX teacher harassment claims by using the two-part test from *Gebser*.¹⁴² However, it also added a third prong from its decision in *Murrell*, which involved an allegation of *peer* sexual harassment, stating that “this sort of supervisory liability is imposed . . . [when] the harassment was ‘so severe, pervasive, and objectively offensive that it . . . deprived the victim of access to the educational benefits or opportunities provided by the school.’”¹⁴³ Essentially, the court’s third prong in *Escue* is a combination of the two new prongs the *Davis* court had added to the *Gebser* two-prong test, even though the *Davis* test is applicable to *peer* sexual harassment cases and the *Gebser* test is applicable to sexual harassment claims involving *teachers*. Although ultimately the 10th Circuit did not address this third prong in its decision, it remains to be seen if the court will, in future cases, include this additional element in its analysis of cases of teacher sexual harassment as well as in those of peer sexual harassment and, if so, if the analysis and result will differ from that previously seen.

POLICY CONSIDERATIONS: It can well be argued that the referenced added element will have an impact on a plaintiffs’ ability to establish a *prima facie* case of teacher-on-student sexual harassment. In such cases, one scholar noted, “[t]he Title IX standard for civil liability is thus more protective of the institution and less protective of the victim.”¹⁴⁴ The 10th Circuit’s inclusion of the two additional factors from *Davis* makes it even more difficult for plaintiffs alleging sexual harassment by a teacher because it further complicates the analysis. For instance, what actions or combination of actions is “severe, pervasive, and objectively offensive?” Justice Kennedy’s dissent in *Davis* encompasses such concerns as he asserts, “[t]he majority does not explain how a school is supposed to discern from a mishmash of factors what is actionable discrimination.”¹⁴⁵ “‘Systemic effect’ [according to Justice Kennedy] does nothing to clarify the content of its standard.”¹⁴⁶ The language used “fails to narrow the class of conduct that can trigger liability.”¹⁴⁷ What is an “overt, physical deprivation of access to school resources?”¹⁴⁸

The Supreme Court has either declined to address, or otherwise failed in its attempts to clarify actionable discrimination and, instead, has created additional uncertainty for the lower

“ school districts should conduct training for teachers, administrators and students on how to recognize and respond to harassment ”



courts, not to mention school officials. This uncertainty is further exacerbated by the 10th Circuit's inclusion of additional elements usually reserved for cases of peer sexual harassment, in its analysis of cases alleging sexual harassment by a teacher. The court's construction of a "multifactor balancing test,"¹⁴⁹ may prove too difficult for plaintiffs to navigate in cases of student-teacher sexual harassment in the 10th Circuit.

RECOMMENDED ACTIONS FOR SCHOOL DISTRICTS

The Supreme Court explicitly rejected the application of agency principles in sexual harassment cases,¹⁵⁰ and made an important distinction between the language contained in Title VII and Title IX. Specifically, the court explained, "Title VII, in which the prohibition against employment discrimination runs against 'an employer,'¹⁵¹ explicitly defines 'employer' to include 'any agent.'"¹⁵² "Title IX contains no comparable reference to an educational institution's 'agents,'" said the court in *Gebser*.¹⁵³

The following actions are designed to parallel procedures employers are advised to follow in the employment context and to provide guidance for school officials "to avoid liability in situations involving peer harassment as well as [to] further the public policy of eradicating inappropriate harassing behavior."¹⁵⁴ Therefore, school districts are advised to take the following steps:¹⁵⁵

- 1) at a minimum, school districts must not treat claims of male and female victims of sexual harassment differently;
- 2) school districts should adopt an anti-harassment policy for prevention, reporting and investigation of peer sexual harassment;¹⁵⁶

3) school districts should conduct training for teachers, administrators and students on how to recognize and respond to harassment;

4) school officials should respond quickly and appropriately to claims of harassment;

5) school districts should keep records of all complaints of sexual harassment;

6) school officials should discipline teachers and administrators who are aware of harassment but fail to respond; and

7) given the continuing confusion on the issue of intent, school districts should continue to argue that Title IX requires intentional conduct.

CONCLUSION

The impact the 10th Circuit's interpretation of the *Gebser* and *Davis* tests will have on a plaintiff's ability to succeed in a claim against a school district for sexual harassment resulting from conduct by a teacher or a fellow student is uncertain. It should not be forgotten that "Congress enacted Title IX in 1972 with two principal objectives in mind: '[T]o avoid the use of federal resources to support discriminatory practices' and 'to provide individual citizens effective protection against those practices.'"¹⁵⁷ The possible effects of the Supreme Court's tests for sexual harassment by teachers and students may run counter to these principles if a plaintiff is effectively barred from bringing a claim. Only time will tell whether the decisions from the 10th Circuit will further the objectives Congress intended to effectuate when it enacted Title IX and whether future 10th Circuit sexual harassment jurisprudence will provide bridges or barriers to plaintiffs asserting such claims. In the mean-

time, it is important for educational institutions to remain vigilant in their efforts to prevent sexual harassment, to detect harassment that may be on-going and to respond quickly and effectively once the harassment is known.

1. *Davis v. Monroe County Board of Education*, 526 U.S. 629, 653 (1999).
2. Susan P. Stuart, *Jack and Jill Go To Court: Litigating a Peer Sexual Harassment Case Under Title IX*, 29 AM. J. TRIAL ADVOC. 243, 243 (Fall 2005).
3. *Id.* at 244.
4. 20 U.S.C. §§ 1681 et seq.
5. 524 U.S. 274 (1998).
6. 526 U.S. 629 (1999).
7. 186 F.3d 1238 (10th Cir. 1999).
8. 450 F.3d 1146 (10th Cir. 2006).
9. 20 U.S.C. § 1681 et seq.
10. 20 U.S.C. § 1681(a).
11. 42 U.S.C. § 2000d et seq.
12. *Cannon v. University of Chicago*, 441 U.S. 677, 704 (1979); see 42 U.S.C. § 2000d.
13. *Gebser* at 286.
14. *Id.* at 286, citing *Guardians Assn. v. Civil Serv. Comm'n of New York City*, 463 U.S. 582, 599 (1983).
15. Diane Heckman, *Tracing the History of Peer Sexual Harassment in Title IX Cases*, 183 ED. LAW REP. 1, 3 (Jan. 29, 2004).
16. 42 U.S.C. § 2000e-2(a)(1) (1994).
17. JUDITH G. GREENBERG ET AL., *WOMEN AND THE LAW* 31 (3d ed. 2004).
18. *Id.*
19. *Gebser* at 286; 42 U.S.C. § 2000e et seq.
20. *Gebser* at 286-7, quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 254 (1994).
21. *Gebser* at 287, citing *Cannon* at 704.
22. 20 U.S.C. § 1681(c).
23. 20 U.S.C. § 1681(a)(3).
24. 20 U.S.C. § 1687(1).
25. *Id.*
26. 20 U.S.C. § 1682; 34 C.F.R. § 106.2(g).
27. 503 U.S. 60 (1992).
28. *Cannon* at 717.
29. 422 U.S. 66 (1975).
30. *Cannon* at 688-89.
31. *Cannon* at 689 n.9.
32. *Id.* at 709.
33. *Id.* at 703.
34. *Id.* at 695-96.
35. *Id.* at 696.
36. *Id.* at 704.
37. *Franklin* at 76.
38. *Id.* at 70-71.
39. *Id.* at 77.
40. *Id.* at 77; citing *Cf. Cort* at 84-85.
41. 42 U.S.C. § 2000d-7(a)(2); *Franklin* at 78.
42. 42 U.S.C. § 2000d-7(a)(1); *Franklin* at 78.
43. *Franklin* at 78.
44. *Id.* at 72.
45. *Id.* at 78.
46. *Id.* at 70-71.
47. *Id.* at 76.
48. *Gebser* at 290.
49. *Id.* at 285.
50. *Id.* at 290.
51. U.S. Const. art. I, § 8, cl. 1.
52. *Gebser* at 287.
53. *Gebser* at 287, quoting *Franklin* at 74.
54. *Gebser* at 289.
55. *Id.*
56. *Id.* at 291.
57. *Id.* at 290.
58. *Id.*
59. *Id.*
60. *Id.* at 278.
61. *Id.*
62. *Id.* at 278-79.
63. *Id.* at 278.
64. *Id.*
65. *Id.*

66. *Id.*
67. *Id.*
68. *Id.*
69. *Id.*
70. *Id.* at 291.
71. *Id.* at 291-92.
72. *Davis* at 650.
73. U.S. Const. art. I, § 8, cl. 1; *Id.* at 639-40.
74. *Davis* at 640.
75. *Id.* at 640-41.
76. *Id.* at 644.
77. *Id.* at 644-45.
78. *Id.* at 648.
79. *Id.* at 645.
80. *Id.* at 644.
81. *Id.* at 646.
82. *Id.* at 651.
83. *Id.* at 651-52.
84. *Id.* at 653.
85. *Id.*
86. *Id.* at 652.
87. *Id.*
88. *Id.* at 650.
89. *Id.* at 654.
90. *Id.* at 633.
91. *Id.* at 653.
92. *Id.* at 634-35.
93. *Id.* at 654.
94. *Id.*
95. *Id.* at 633-34.
96. *Id.* at 634.
97. *Id.* at 635.
98. *Id.*
99. *Id.*
100. *Id.* at 634.
101. *Id.*
102. 186 F.3d 1238 (10th Cir. 1999).
103. 450 F.3d 1146 (10th Cir. 2006).
104. *Davis* at 653.
105. *Id.*
106. *Id.*
107. 186 F.3d 1238 (10th Cir. 1999).
108. *Id.* at 1249.
109. *Id.* at 1242.
110. *Id.* at 1243.
111. *Id.*
112. *Id.*
113. *Id.* at 1244.
114. *Id.*
115. *Id.*
116. Diane Heckman, *Tracing the History of Peer Sexual Harassment in Title IX Cases*, 183 ED. LAW REP. 1, 16 (Jan. 29, 2004).
117. *Murrell* at 1247.
118. *Id.* at 1248.
119. *Id.*
120. *Id.* at 1249.
121. Diane Heckman, *Tracing the History of Peer Sexual Harassment in Title IX Cases*, 183 ED. LAW REP. 1, 16 (Jan. 29, 2004).
122. *Murrell* at 1252.
123. *Id.*
124. *Davis* at 680.
125. *Id.*
126. *Id.* at 666.
127. *Id.*
128. 450 F.3d 1146 (10th Cir. 2006).
129. *Id.* at 1149.
130. *Id.*
131. *Id.* at 1150.
132. *Id.*
133. *Id.*
134. *Id.* at 1150-51.
135. *Id.* at 1151.
136. *Id.*
137. *Id.* at 1150.
138. *Id.* at 1153.
139. *Id.*
140. *Id.*
141. *Id.* at 1155.
142. *Escue* at 1152.
143. *Id.* at 1152, citing *Murrell* at 1246.

144. Susan P. Stuart, *Jack and Jill Go to Court: Litigating a Peer Sexual Harassment Case Under Title IX*, 29 AM. J. TRIAL ADVOC. 243, 250 (Fall 2005).

145. *Davis* at 676.

146. *Id.* at 677.

147. *Id.* at 678.

148. *Id.* at 650.

149. *Id.* at 675.

150. *Gebser* at 283.

151. *Gebser* at 283, citing 42 U.S.C. § 2000e(-2)(a)

152. *Gebser* at 283, citing 42 U.S.C. § 2000e(b).

153. *Gebser* at 283.

154. Daniel B. Tukel, *Student Versus Student: School District Liability For Peer Sexual Harassment*, 75 MICH. B.J. 1154, 1157 (Nov. 1996).

155. Ann K. Wooster, Annotation, *Sex Discrimination in public education under Title IX – Supreme Court cases*, 158 A.L.R. S.ed. 563 (1999); citing Belinda Bean, Annotation, *Right of Action Under Title IX of Education Amendments Act of 1972 (20 U.S.C.A. § 1681 et seq.) Against School or School District for Sexual Harassment of Student by Student's Peer*, 141 A.L.R. FED. 407 (1997); see also Daniel B. Tukel, *Student Versus Student: School District Liability For Peer Sexual Harassment*, 75 MICH. B.J. 1154, 1157 (Nov. 1996).

156. 30 CFR § 106.8.

157. *Gebser* at 286, citing *Canon* at 704.

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A Day with the Judges: Recent Developments in Medical Malpractice

Friday, October 26, 2007, 8:30 a.m. – 4:00 p.m.

Moderators: Justice Marian P. Opala, Oklahoma Supreme Court, and Nazih Zuhdi, MD

a.m.		12:00	Lunch (Included)
8:30	Malpractice Overview, Prevention and Litigation Stress Syndrome S. Sandy Sanbar, MD, PhD, JD, Chair, ABLM	p.m.	
9:00	Emerging Hospital and MCO Liability Stanley Hupfeld, CEO, Integris Health	1:00	Expert Medical Testimony: Gatekeepers and Reviewers Judge John Fischer
9:30	Medical Error Disclosure and Apology: To Err is Human William D. Oehlert, MD, OSMA President	1:30	Malpractice Lawsuit Resolution: Formal Litigation, ADRs and Appeals Justice Steven W. Taylor
10:00	BREAK	2:00	Malpractice Insurance Carl Hook, MD, CEO, PLICO
10:15	Negligence & Consent Issues: Recent Trends Chief Judge Kenneth L. Buettner	2:30	BREAK
10:45	Medical Records: Informal Voluntary Disclosure Justice Marian P. Opala	2:45	Criminalization of Malpractice Curtis E. Harris, MS, MD, JD, FCLM
11:15	Tort Reform in Oklahoma The Honorable Lt. Governor Jari Askins	3:15	Selected Cases & Q&A's All available Faculty
		4:00	ADJOURN

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EOE



Immigration and Education

By Teresa Rendon and Juan J. Maldonado

*Give me your tired, your poor, your huddled masses yearning
to breathe free, The wretched refuse of your teeming shore.
Send these, the homeless, tempest-tost to me, I lift my lamp
beside the golden door!*¹

When Emma Lazarus penned her famous sonnet later engraved upon on the Statue of Liberty, the United States was the destination of immigrants from Eastern Europe, Ireland, Italy and Germany who voyaged across the Atlantic with dreams of a better life. Many of them, both adults and children alike, filled smoky factories and sweatshops in our great industrial cities. In contrast, the majority of 21st century immigrants cross a narrower divide, the Rio Grande River, and disperse themselves throughout urban and rural America. The welcoming language of Ms. Lazarus' verses stands in stark contrast to the current harsh climate as reflected in recent state legislation regarding immigrants.

In the year 2006, state legislatures around the country proposed more than 570 immigration bills. In 32 states, those bills became law.² As the year 2007 progresses, more than 1,169 immigration bills have been introduced in state legislatures, and in at least 18 states those bills have been enacted.³ On May 4, 2007, Oklahoma passed its own state immigration law titled "Oklahoma Taxpayer and Citizen Protection Act of 2007," which becomes effective Nov. 1, 2007.

One common area affected by these state immigration laws is education.⁴ Of the bills introduced in 2007, 105 bills in 30 different states contained provisions relating to immigration and education.⁵ There are marked differences, however, in the way in which these

bills affect undocumented immigrants' access to education. Some attempt to limit access to state public school systems; others bar undocumented immigrants from obtaining in-state tuition discounts, and yet others aim to exclude illegal immigrants from state universities.⁶

This article focuses on the impact of the "Oklahoma Taxpayer and Citizen Protection Act of 2007" on education in the state of Oklahoma. It commences with a general overview of the current constitutional and federal statutory law regarding education and immigration. Secondly, it identifies the relevant sections of the "Oklahoma Taxpayer and Citizen Protection Act of 2007" that could impinge upon access to education for undocumented immigrant children. Third, it discusses ambiguity in language and application of the relevant provisions that could affect education.

CONSTITUTIONAL AND FEDERAL LEGISLATIVE LAW

Although education is considered the stairway to upward mobility and an almost sacred element of the American ethos, the U.S. Supreme Court has held that there is no constitutional right to an education, neither implicitly nor explicitly.⁷ However, the states, including Oklahoma, have filled the void by guaranteeing the right to a free, public education in their constitutions.⁸

The question of what are the rights of limited-English-speaking, immigrant students arose

in the 1974 case of *Lau v. Nichols* brought by parents of 1,800 Chinese-speaking students. The *Lau* court held that San Francisco School District was in violation of Title VI due to its failure to provide 1,800 Chinese-speaking students a “meaningful opportunity to participate in the educational program.”⁹ The court emphasized that providing the same resources that English-speaking students received did not constitute “equality of treatment” and was tantamount to providing no education at all.¹⁰ Although bilingual schools and schools that imparted instruction in a language other than English have existed since the founding of this nation, the *Lau* case was the modern-day harbinger of bilingual education.

The same year that *Lau* was decided, Congress responded by enacting the Equal Education Opportunity Act, which stated that “failure by an educational agency to take appropriate action to overcome language barriers that impede equal participation by its students in its instructional programs” constituted denial of equal educational opportunity.¹¹ In 1981, the Supreme Court addressed the meaning of the term “appropriate action within the Equal Education Opportunity Act.” The court stated that the act did not require educational programs for limited English-speaking students to adopt a particular type of “language redemption program.”¹² Instead, appropriate action would be evaluated by three criteria: “1) whether the educational theory on which the program is based is sound; 2) whether the theory endorsed is implemented effectively; and 3) whether the program achieves results.”¹³

In 1982, the Supreme Court decided what perhaps constitutes the most important deci-



“ Although bilingual schools and schools that imparted instructions in a language other than English have existed since the founding of this nation... ”

sion regarding education and immigrant students, particularly those who are undocumented. The court struck down a Texas law forbidding state funding to schools who allowed undocumented students to enroll and held that states could not deny access to education to children who were undocumented immigrants.¹⁴ In arriving at this decision, it noted the importance of education that provides students the opportunity to learn societal values, to equip themselves with the necessary tools to participate effectively in our democratic system, and to give students the opportunity to acquire skills and knowledge that will aid them to progress economically through their lives.¹⁵ The *Plyler* court also emphasized that some fundamental differences exist when dealing with undocumented children as opposed to dealing with legal resident or citizen children. First, the children are not responsible

for their parents’ choice of being in the United States in violation of immigration law, and secondly, the children do not have the capacity to change their own immigration status or to return to their country of origin.¹⁶ The court has expressed concerns that denial of access to education would have a permanent effect on illegal immigrant children’s lives and diminish the possibility that some day they might contribute to the functioning and development of society.¹⁷

In 2001, Congress passed the No Child Left Behind Act (“NCLB”).¹⁸ Under the Title III of the act, federal funds are available for public school districts to develop and sustain English acquisition programs.¹⁹ In contrast to earlier federal legislation, NCLB makes no mention of bilingual education, but mentions “English language acquisition” more than 100 times. It is clear that the current federal education law

emphasizes the learning of English and dismisses the maintenance of the child's home language. NCLB requires teachers involved in English acquisition programs to be fluent in both English and any other language utilized to teach the students with an English-language deficiency.²⁰ Under NCLB, federal funds are available for teacher training in specialized techniques of teaching English as a second language.²¹

Oklahoma schools comply with federal law in terms of providing special services for immigrant students, by identifying, testing and monitoring those students who are not yet fluent in English. School districts receive additional funding for the number of English language learners (non-English-fluent students) they have enrolled. State law requires instruction to be imparted in the English language, but carves out exceptions for foreign language classes.²²

With access to primary and secondary education guaranteed by federal and state law, undocumented students are allowed to attend public schools from kindergarten through the 12th grade. In fact, there are an estimated 50-60,000 undocumented immigrant high school graduates in the United States.²³ The problem arises when these students graduate from high school, especially if their goal is a college education. These undocumented immigrant students, upon graduation, are not guaranteed any assistance to pursue post-secondary education. In 1996, the federal government enacted the Illegal Immigrant Reform and Immigrant Responsibility Act, IIRIRA, Section 505 which states: "... an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration and scope) without regard to whether the citizen or national is such

a resident."²⁴ This language restricts a state's ability to grant undocumented alien students benefits including in-state tuition. Nonetheless, 10 states, including Oklahoma, do offer undocumented students in-state tuition rates under certain circumstances. These states have avoided the language in IIRIRA by basing their in-state tuition rates on requirements other than residency²⁵ such as attendance and graduation from an in-state high school.²⁶ Congress has made various efforts to pass legislation to clarify the language of Section 505 addressing whether federal entitlements extend to illegal immigrant students who have availed themselves of the secondary education accorded to them by *Plyler v. Doe*. Nonetheless, the issue remains unresolved.

OKLAHOMA TAXPAYER AND CITIZEN PROTECTION ACT OF 2007

The Oklahoma Taxpayer and Citizen Protection Act includes five provisions which could potentially affect education. First, Section 3(a) makes it illegal for individuals to either knowingly or recklessly transport illegal immigrants within the state. Second, Section 3(b) makes it illegal for any individual to knowingly or recklessly "conceal, harbor, or shelter" any illegal immigrant. Third, Section 10 (E) forbids any person or agency from prohibiting public employees from disclosing information relating to the immigrant status of a person to other

federal state and local entities. Fourth, Section 4(d) requires those educational institutions that provide their students with identification cards to include a statement upon the card itself clarifying that the identification card is only valid for use within the educational facility. Fifth, Section 11(a) codifies the in state tuition requirements of Title 70 Section 3242, but also restricts undocumented student's ability to obtain any "postsecondary education benefit" based on "residency within the state," including scholarships.



“ Further, the Oklahoma act does not provide any exception regarding public educational facilities and makes no mention of excepting common carriers, school bus drivers, car-pooling parents... ”

Transporting Aliens

These provisions are plagued with ambiguity. The language of Sections 3(a) and 3(b) is identical to that of their federal counterparts in the Federal Immigration Statute, 8 U.S.C. Section 1324. Concerning Section 3(a), transportation of an illegal immigrant violates the provisions of the bill only when the transportation is in “in furtherance of the illegal presence of the alien in the United States.” Different circuits have adopted different approaches to determine what constitutes in “furtherance of.”

The 10th Circuit Court of Appeals has addressed the issue and declared that a jury “may consider any and all relevant evidence” including “time, place, distance, reason for trip, overall impact of trip, and defendant’s role in organizing and/or carrying out the trip” when determining whether the transportation met the requirements of the “in furtherance of” language of the federal act.²⁷ In addition, the 10th Circuit has held that the term “*in furtherance of*” was “sufficiently broad to encompass any person who acts, regardless of profit, motive or close relationship, with knowledge or with reckless disregard of the fact that the person transported is an illegal alien and that transportation or movement of the alien will help advance, or promote the alien’s illegal entry or continued illegal presence in the United States.”²⁸ The language of the statute, the court observed, reached as far as prohibiting transportation by a friend or relative aimed at aiding the undocumented alien find work.²⁹

It is unclear whether Oklahoma state courts will interpret the “in furtherance of” language consistently with the 10th Circuit’s broad definition. However, because the legislative intent of the enacting legislature indicates a desire to go beyond existing law, it is unlikely that the state courts will adopt a construction that constricts the act’s broad language. Section 3 of the Oklahoma act stated that the compelling public interest in restricting illegal immigration

justified both requiring public agencies to cooperate in the enforcement of federal immigration laws as well as “other measures...to ensure the integrity of various governmental programs and services.” This broad language suggests that the state Legislature intended to provide for authority exceeding that already provided for federally.

The adoption of a broad definition for this term and its application to the following educational hypothetical could give rise to troubling circumstances. Section 3(a) applies to “any person” who knowingly or recklessly transports undocumented immigrants. Further, the federal ruling in *U.S. v. Chavez* suggests that the individual’s relationship to the person being transported is irrelevant and that the language applies to all individuals regardless of their relationship to the individual being transported, whether they stand to profit from the transportation, or whether they possess any additional motives.³⁰ Does this apply to illegal immigrant parents, bus drivers, teachers or neighbors who transport an undocumented child to school? Consider first that, if the undocumented child does not attend school, her parents violate state compulsory attendance requirements, expose themselves to eventual prosecution and potential disclosure of their undocumented status. Consequently, a bus driver, neighbor, friend or family member offering to transport an undocumented child to school, which then eliminates the possibility that the parents’ illegal status would be discovered for tangential violation of the state law, could be considered to have acted “in furtherance of” the illegal presence in the United States of the alien parents.

Although Section 3(c) of the Oklahoma act mirrors Title 8 U.S.C section 1621(b), which provides exceptions for certain “state and local public benefits,” such exemptions deal only with charitable institutions and provision of emergency health care services, and thereby do not apply to education. Further, the Oklahoma

act does not provide any exception regarding public educational facilities and makes no mention of excepting common carriers, school bus drivers, car-pooling parents or the like from liability under the act. Nevertheless, Section 8 (a) only requires the verification of legal residency if an individual, who is 14 years or older, applies for state or local public benefits as defined in 8 U.S.C., Section 1621, and federal public benefits as defined in 8 U.S.C., Section 1611. Both of these sections include postsecondary education within the definition of public benefit, but make no mention of any educational benefits other than those included under postsecondary education; therefore, leading to the conclusion that the Oklahoma act requirements may only apply to post secondary education.³¹

Sheltering Aliens

Section 3(b) makes it unlawful for a person to "conceal, harbor or shelter from detection any alien in any place ... including any building or means of transportation" This language adopts the language of 8 U.S.C. Section 1324 (a)(1)(A)(iii). The troubling language in this section is the term "harbor." Once again, various federal circuits have adopted different definitions for the term "harbor." While no 10th Circuit case adopting a specific definition could be found, the 6th Circuit has interpreted harbor to mean, "to clandestinely shelter, succor and protect improperly admitted aliens."³² In contrast, the 2nd Circuit has interpreted such term as "conduct tending substantially to facilitate an alien's remaining in the United States illegally."³³ Similarly, the 5th Circuit has held that harbor signifies "any conduct which tends to substantially facilitate any alien's remaining in the

United States illegally" with the qualification that the term carries with it the connotation of the intent to hide from detection.³⁴ Also, the 9th Circuit has defined harbor as affording shelter,³⁵ but has also qualified such definition by requiring that any person prosecuted for harboring must be found to have the intent to violate the law.³⁶ The question remains as to whether if Oklahoma courts adopt the 2nd, 5th or 9th Circuits' definition of harbor, would a university be *harboring* an undocumented student by allowing the student to attend its educational facilities and thus providing protection from detection by the rest of society during the period of school attendance?



“ Under this definition, it could be argued, that providing any transportation to an undocumented alien would be furthering the alien's illegal presence in the United States. ”

Both Section 3(a) and 3(b), require *mens rea* of either "knowingly or in reckless disregard." The statute fails to provide a definition for either of those terms. Although the 10th Circuit has not adopted a specific definition for the term knowingly, it has indicated *in dicta* that "guilty knowledge that the transportation activity furthers an alien's illegal presence in the United States is an essential element of the crime."³⁷ Under this definition, it could be argued, that providing any transportation to an undocumented alien would be furthering the alien's illegal presence in the United States. For example, a college student providing transportation to an undocumented classmate will be making the undocumented student's life less burdensome; therefore, possibly adding to the undocumented student's impression that living in the United States is better than the life he lived in his country of origin; thus, motivating him to remain undocumented in this country.

Alternatively, Oklahoma state courts could adopt the definition of knowingly as found in the Oklahoma Penal Statute, Title 21, Section 96, "Crimes and Punishment." It defines knowingly as "knowledge of the fact" but does not require "knowledge of the unlawfulness of such act or omission." Under this definition, a

college student could be in violation of Section 3(a) by knowing that the classmate he is transporting is an illegal immigrant even though he does not know that transporting such an individual is against Oklahoma state law.

The 10th Circuit has defined in reckless disregard as a "deliberate indifference to facts which, if considered and weighed in a reasonable manner, indicate the highest probability that the alleged aliens were in fact aliens and were in the United States unlawfully."³⁸ Could a college student possess this level of *mens rea* if he transports his Hispanic friend to the university, whom he knows was born in Mexico and came to the United States when he was a child? Alternatively, state courts may turn to Oklahoma state law and find a definition of in reckless disregard. The Court of Criminal Appeals, in the context of in reckless disregard to the safety of others, has defined reckless as "the omission to do something which a reasonable careful person would do, or the lack of the usual and ordinary care and caution in the performance of an act usually and ordinarily exercised by a person under similar circumstances and conditions."³⁹ Would a person of usual and ordinary care suspect that a person with a Spanish accent might be illegally in this country?

Disclosure of Information

Section 10 (E) of the Oklahoma act declares that in spite of any law, no person or agency may prohibit public employees from disclosing information relating to the immigrant status of a person to other federal state and local entities. This section could be potentially used to compel public educational facilities to disclose information to other agencies regarding the immigration status of their students. This section of the statute directly contradicts the Family Educational and Privacy Rights Act, which conditions the receipt of the federal funds to educational facilities upon the guarantee that no education records will be released by the educational facility without the written consent of the child's parent.⁴⁰ The federal act defines education records as "those records, files, documents and other materials which (i) contain information directly related to a student; and (ii) are maintained by an educational agency or institution or by person acting for such agency or institution."⁴¹ The federal act does provide for some exceptions to the disclosure requirements, for example, if required by state law and relates to the juvenile justice sys-

tem, or if the educational facility receives a subpoena to release such information.⁴² With federal and state law conflicting, it is possible to imagine a scenario where an educational facility might refuse to release a student's educational record, in violation of the Oklahoma act, but in accord with the Federal Legislation.

Student Identification Cards

Another provision which educational institutions must heed is Section 4 of the Oklahoma act which allows certain entities, including educational institutions, to provide their employees and students with identification cards if they are legally within the country. Section 4(D) of the Oklahoma act exempts educational institutions from verifying the immigration status of the person receiving the identification card so long as the identification card includes a statement upon the card itself clarifying that the identification card is only valid for use within the educational facility.

Postsecondary Education

With regards to postsecondary educational benefits, Section 11 (A) of the Oklahoma act states that "except as otherwise provided in Section 3242 of Title 70 of the Oklahoma Statutes, an individual who is not lawfully present in the United States shall not be eligible on the basis of residency within the state for" scholarships, financial aid or resident tuition. According to Title 70, Section 3242, if an undocumented student meets the general requirements for resident tuition, the undocumented student is eligible for in-state tuition, so long as the student files an affidavit with the educational institution stating that he has filed an application to legalize his immigration status or that the he will do so once he becomes eligible under federal immigration law.⁴³ Furthermore, Section C of that Oklahoma statute states that if an undocumented student meets the general residency requirements and the requirements for undocumented students discussed above, the undocumented student is also eligible for any scholarships and financial aid provided by the state.⁴⁴ As a result, it seems that undocumented students attending Oklahoma postsecondary educational facilities could still receive in state tuition benefits, scholarships and financial aid. However, Section 11 (A) does prohibit undocumented students from receiving scholarships, financial aid or resident tuition if the eligibility for those educational benefits is based on "residence within the state." The gen-

eral requirements for in-state tuition are graduation from an Oklahoma high school and residency in the state of Oklahoma for two years prior to high school graduation.⁴⁵

It seems unclear whether undocumented students are still eligible for either in state tuition, scholarships or financial aid since one of the requirements for undocumented students to receive those educational benefits is residency within the state for a period of two years prior to graduation from high school.⁴⁶ Under a literal reading of Section 11 (A), the language of “except as otherwise provided in section 3242 of Title 70,” would seem to suggest that Title 70 trumps the new Oklahoma act and undocumented students are still eligible for those post-secondary educational benefits. Troubling under this interpretation is that Section 11 (A) would then serve no purpose except to perhaps discourage financial aid and scholarships provided by private individuals since Section 3242 (C) of the Oklahoma statute only relates to educational benefits provided by the state.

CONCLUSION

Educational institutions have much to consider under the new state immigration law. Some provisions, such as student identification cards, make compliance easy. Others, such as the postsecondary scholarship provisions, create more doubts than guidance.

1. Emma Lazarus, “The New Colossus.” This poem written in 1883 is engraved on a tablet within the pedestal of the Statue of Liberty.

2. Stephen Yale-Loehr & Ted Chiappari, *Immigration: Cities and States Rush in Where Congress Fears To Tread*, 12 *Bender’s Immigr. Bull.* No. 6 (2007).

3. *Overview of State Legislation related to Immigration and Immigrants in 2007*, National Conference of State Legislatures, www.ncsl.org/programs/immig/2007StateLegislationImmigration.htm (Last visited May 23, 2007).

4. *I.d.*

5. *I.d.*

6. *I.d.*

7. *San Antonio Indep. School Dist. v. Rodriguez*, 411 U.S. 1, 35 (1973).

8. Okla. Const. 13 Sec. 1 requires the state to “establish and maintain a system of free public schools” for all children in the state, and Sec. 4 of the state Constitution makes attendance compulsory.

9. *Lau*, 414 U.S. at 568.

10. *I.d.* at 566.

11. 20 U.S.C.S § 1703 (2006).

12. *Castaneda v. Pickard*, 648 F.2d 989, 1009 (5th Cir. 1981).

13. Thomas F. Felton, Comment, *Sink or Swim? The State of Bilingual Education in the Wake of California Proposition 227*, 48 *Cath. U. L. Rev.* 843, 861 (1999).

14. *Plyler v. Doe*, 457 U.S. 202, 219 (1982).

15. *I.d.* at 221.

16. *I.d.* at 220.

17. *I.d.* at 221.

18. Title III: English Language Acquisition, *An End to Bilingual Education, New Money to Support it? Or Both?*, www.communitychange.org/ (last visited June 09, 2006).

19. *I.d.*

20. *I.d.*

21. *I.d.*

22. Okla. Stat. tit. 70 Sec. 11-1102.

23. *In-State Tuition for Illegal Immigrants*, 33 *Trends and Transitions* 9, 9 (2007).

24. 8 U.S.C. § 1623 (2006).

25. Kathleen A. Connolly, Comment, *In Search of the American Dream: An Examination of Undocumented Student, In-State Tuition, and The Dream Act*, 55 *Cath. U. L. Rev.* 193, 208-209 (2005).

26. *I.d.* at 210.

27. *U.S. v. Chavez*, 162 F.3d 1285, 1289 (10th Cir. 1999).

28. *I.d.* at 1288.

29. *I.d.* at 1289 n.2.

30. *I.d.*

31. 8 U.S.C.A. § 1611 (c)(1)(B) and 8 U.S.C.A. § 1621 (c)(1)(b).

32. *Susnjar v. United States*, 27 F.2d 223, 224 (6th Cir. 1928).

33. *United States v. Lopez*, 521 F.2d 437 441 (2nd Cir. 1975).

34. *United States v. Varkonyi*, 645 F.2d 453, 456 and 459 (5th Cir. 1981).

35. *United States v. Acosta DeEvans*, 531 F.2d 428, 429-430 (9th Cir. 1976).

36. *United States v. You*, 382 F.3d 958, 966 (9th Cir. 2004).

37. *Chavez*, 162 F.3d at 1287 note 2.

38. *United States v. Uresti-Hernandez*, 968 F.2d 1042, 1046 (10th Cir. 1992).

39. *Hames v. State*, 818 P.2 904, 908 (Okla. Crim. App. 1991).

40. 20 U.S.C. A. §1232 (g)(b)(1).

41. 20 U.S.C. A. §1232 (g)(a)(4)(a).

42. 20 U.S.C. A. §1232 (g)(b)(1)(E) and (J).

43. Okla. Stat. tit. 70, § 3242 (B)(2) (2005).

44. Okla. Stat. tit. 70, § 3242 (C) (2005).

45. Okla. Stat. tit. 70, § 3242 (A) (2005).

46. *I.d.*

ABOUT THE AUTHORS



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Hagen v. Watts Public Schools: Abuse and Discretion under the Teacher Due Process Act

By Jana Burk

The recent Oklahoma Supreme Court case of *Hagen v. Watts Public Schools*¹ is the first decision from the court addressing “physical or mental abuse” of a child as a ground for terminating a teacher’s employment under the state’s Teacher Due Process Act.² The court’s opinion, in a 7-2 decision, presents several issues of concern for educators and child advocates alike — not just because of the ultimate disposition by the court, but because of its interpretation of a trial court’s authority in a trial *de novo* review of a teacher termination decision.

The facts of the *Hagen* case were largely undisputed: Jerry Hagen was a career teacher with an unblemished record and employed by the Watts Public Schools of Adair County as a special education teacher. In October of 2004, however, he repeatedly slapped and threatened a mentally retarded sixth grade student in his class and pinned him against a window for refusing to admit to typing the word “jackass” on a school computer.

As a result of this episode, the superintendent of schools for the Watts School District recommended that Hagen be dismissed, and following a due process hearing conducted pursuant to the Teacher Due Process Act of 1990, the Watts School District Board of Education voted to dismiss Hagen on the statutory ground of “mental and physical abuse to a child,” one of the eight grounds for terminating a career teacher found within the Teacher Due Process Act at § 6.101.22(A). (And one of only a few grounds for which teachers may be terminated without first being given an admon-

ishment and an opportunity to improve their performance.)

Hagen filed a petition for a trial *de novo* in the District Court of Adair County asking the court to review the termination decision pursuant to the Teacher Due Process Act, arguing that the school district failed to meet its burden of proof that Hagen’s dismissal was warranted on the statutory ground of physical or mental abuse of a child. At both his hearing before the school board and his trial *de novo* before the district court judge in Adair County, Hagen expressed remorse for the events and apologized to the student and the student’s family. He did not dispute that he had intentionally slapped and threatened the student. Instead, he explained that he had not intended to hurt (or abuse) the child.

Although Hagen never claimed that he had slapped the student as a form of punishment, both the trial court and Oklahoma Supreme Court noted in their decisions that Okla. Stat. tit 70, § 24-100 allows a teacher to use “ordinary

force as a means of discipline, including but not limited to spanking, switching or paddling.” Both decisions also pointed out that the student’s grandmother and brother testified in support of Hagen and that the grandmother testified that she herself sometimes slapped the student when he had “little temper tantrums” because “that’s the only way I could get him to hush.”

Ultimately the trial court overturned the school district’s decision, finding that Hagen had not intended to harm the child and that the school district had not met its burden of proof that Hagen had abused the student. The school district appealed the trial court’s decision and Hagen’s reinstatement. The Oklahoma Supreme Court retained jurisdiction, presumably to address the core legal question of what constitutes “mental or physical abuse to a child” within the Teacher Due Process Act.

In regard to the definition of “mental or physical abuse to a child” under the Teacher Due Process Act, the Watts School District argued that the trial court improperly required it to prove that Hagen intended to harm or abuse the student for the school board’s finding of physical and mental abuse to stand. The school district’s contention was that the Teacher Due Process Act does not define “mental or physical abuse to a child” at all, much less to require specific intent. It also explained that in neither the Oklahoma Child Abuse Reporting and Prevention Act nor the criminal statutes regarding the abuse of a child does the definition of abuse require specific intent.³

In its opinion, however, the Oklahoma Supreme Court declined to address the definition of abuse within the context of a teacher termination. Instead, the court noted the written findings of fact issued by the trial judge, determined that such findings were supported by competent evidence, and

explained that the trial court “merely determined that the school district failed to prove that the teacher’s actions constituted ‘physical or mental abuse of a child’ within the meaning of the Teacher Protection Act.”

Although some may not agree with the court’s classification of Hagen’s treatment of K.H., the Hagen opinion is most remarkable for the language within the key paragraph explaining the court’s holding. In particular, toward the end of its analysis, and arguably unessential to its ultimate holding, the court states that a trial court has authority to reinstate a teacher dismissed for abusing a child *even if* the trial court agrees with the school board’s determination that the teacher physically or mentally abused a child:

The legislature could have, but did not, define “mental or physical abuse of a child” in the Act. The statute uses the permissive “may” with regard to dismissal, which implies that even if the school board finds physical or mental abuse of a child, it may or may not dismiss the teacher, at its discretion. The legislature has, however, in giving a dismissed teacher the right to a trial de novo, placed the final discretion with the trial judge, based on the evidence.⁴

Considering that the trial court in the instant matter did *not* agree with the school district’s determination that Hagen had abused the student, as well as the fact that the Legislature’s use of the word “may” in § 6-101.22 refers to the discretion of the school board and not the trial court, this dicta is perplexing.⁵ Indeed, the vigorous dissent opinion authored by Justice Taylor states that the majority opinion is cause for alarm. The dissent explains that while the court could have simply affirmed the trial court’s determination that there was insufficient evidence to find that Hagen abused the student,

“ The school district’s contention was that the Teacher Due Process Act does not define ‘mental or physical abuse to a child’ at all, much less to require specific intent. ”





“ That discretion to decide which teacher to hire or fire is vested only in the school district board and not in the district court. ”

the court wrongfully interprets the Teacher Due Process Act “as vesting the final discretionary authority to fire a teacher with the district courts,” which “implicates a separation of powers violation for placing control over executive branch employees in the judiciary.”⁶

In particular, the dissent explains that once the trial court found that the teacher slapped and yelled at K.H. (and thus abused the child), the trial court had no authority to determine as a matter of its judicial discretion that the teacher should not have been dismissed for the incident of abuse:

The statute provides for trial *de novo* so that the district court is not limited by the record made before the school district board; it requires the school district board to bring forth competent evidence to support the dismissal; and it places upon the district court the duty to determine the adequacy of the evidence supporting the dismissal, i.e., it requires the district court to determine if the school district board’s dismissal is supported by a preponderance of the evidence. . . . But, the district court went beyond the question of whether the preponderance of the evidence showed the teacher inflicted mental or physical abuse upon the child. The district court exceeded its statutory authority set out in 70 O. S.2001, § 6-101 .27 (D), and decided, in its discretion, that the teacher should not be dismissed for this incident of abuse of the child. That discretion to decide which teacher to hire or fire is vested only in the school district board and not in the district court. This is the only reading of § 6-101.27(D) that is consistent with the school district board’s duty to protect the health, safety and welfare of its students.⁷

The legacy of the *Hagen* opinion will be revealed in future teacher termination cases,

though not necessarily in regard to another case involving allegations of physical and/or mental abuse of a child. If the language in the opinion regarding the discretion of the trial court in the *de novo* proceedings under the Teacher Due Process Act is considered more than dicta (or used as a rationale to extend the definition of the *de novo* standard in the context of teacher terminations), it could apply to — and thus allow a trial court to disregard — virtually any ground cited by a school board for a teacher’s termination in the name of judicial discretion. Indeed, considering the variety of cases in which trial courts conduct *de novo* reviews, the language in *Hagen* could have vast implications outside of even teacher termination proceedings.

1. 2007 OK 19, – P.3d –, 2007 WL 987156.
2. OKLA. STAT. tit. 70, §§ 6-101.20 et seq.
3. See Okla. Stat. tit. 10, §§ 7101 et seq; *Baker v. Saint Francis Hosp.*, 2005 OK 36, 126 P.2d 602, fn 4; Okla. Stat. tit. 21, § 844.
4. *Hagen*, 2007 OK 19, at ¶ 20.
5. Whenever a superintendent has determined that a teacher “should be dismissed,” he or she will specify in writing the statutory grounds for the recommendation allowed under section 6-101.22, submit that recommendation to the school board, and the school board may decide to “accept or reject the recommendation of the superintendent.” OKLA. STAT. tit. 70, §§ 6-101.22, 6-101.25 and 6-101.27.
6. *Hagen*, 2007 OK 19, at ¶ 28.
7. *Hagen*, 2007 OK 19, at ¶¶ 28-29.

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The Constitution in the Classroom: Recent Supreme Court Decisions May Spell Big Changes for Public Schools

By F. Andrew Fugitt and Heather N. Hendricks

On an Alaska winter morning in 2002, while most of his classmates were gathered to watch the Olympic Torch Relay as it passed by Juneau-Douglas High School, 18-year-old student Joseph Frederick saw an opportunity for a moment in the spotlight, and launched a plan to realize it. His means to that end: a 20-foot banner bearing the now infamous phrase “Bonghits 4 Jesus,” which he and other students unfurled as the torchbearers passed by the school.¹ The response by school officials sparked a dispute which subsequently wound its way through the federal court system, resulting in a decision by the U.S. Supreme Court.

In addition to educating the majority of American children, public schools are frequently the social and community centers of their neighborhoods. However, it should come as no surprise that these same schools double as battlefields where wars over constitutional rights are waged. From the decision which ended segregated schools in *Brown v. Board of Education*² to the striking down of a law prohibiting the teaching of the theory of evolution in *Epperson v. Arkansas*³ and on many other occasions, the courts, and in particular the Supreme Court, have been called upon to bring an end to these battles.

This year the Supreme Court answered a number of constitutional questions which will affect parents, students and communities in

years to come. In the case of *Morse v. Frederick*, the Supreme Court clarified a school administrator’s authority to regulate student speech. In addition, two important cases on the controversial topic of racial balancing in public schools, *Meredith v. Jefferson County Board of Education*⁴ and *Parents Involved in Community Schools v. Seattle School District No. 1*,⁵ were consolidated for disposition.⁶ And in a case of great interest to high school sports fans and constitutional scholars alike, *Tennessee Secondary School Athletic Association v. Brentwood Academy*,⁷ the high court resolved questions concerning the authority of a state secondary school athletic association to sanction a school for improper recruiting of athletes in light of the school’s protected speech rights.

FIRST AMENDMENT: *MORSE V. FREDERICK*

The facts in *Morse v. Frederick* differ from those in many past student-speech cases. On the day in question, the Olympic torch was to pass through Juneau, Alaska. High school students were released from class early so they could witness the event. Coca-Cola was sponsoring the event and had passed out tiny plastic promotional Coke bottles to the students. Several teachers and administrators were assigned to supervise the students. However, despite their presence, the students were unruly, throwing the tiny bottles at each other and fighting.⁸

Meanwhile, Joseph Frederick and his friends looked on from across the street. The senior had never actually attended class that day, apparently because a heavy snow had blocked his car in the driveway at his home. When Frederick and his friends unveiled their artwork, an exasperated principal Deborah Morse marched across the street and demanded they take it down. When Frederick refused, Morse took the banner from him. Frederick was later suspended for 10 days. Morse believed that the banner was a “violation of the school policy against displaying offensive material, including material that advertises or promotes the use of illegal drugs.” Frederick unsuccessfully appealed the suspension through the school board process. He then sued the school district board of education and principal Morse under 42 U.S.C. § 1983 for a declaratory judgment that his First Amendment rights had been violated and for an injunction to remove the reference to the suspension from his school records.⁹ The district court granted the school officials’ motion for summary judgment on the grounds that no constitutional rights were violated and that the officials had qualified immunity even if there were violations.¹⁰ On appeal, the 9th Circuit Court of Appeals reversed the district court’s decision, relying primarily upon *Tinker v. Des Moines Independent Community School District*,¹¹ where the Supreme Court held that public school students wearing black arm-bands in protest of the Vietnam War were engaging in constitutionally protected speech which, in absence of facts which might reasonably lead school authorities to forecast substantial disruption or material interference with

“ Frederick unsuccessfully appealed the suspension through the school board process. ”

school activities, could not be prohibited.

The Supreme Court reversed the 9th Circuit, holding that Frederick’s First Amendment rights were not violated and that principal Morse was entitled to qualified immunity. Chief Justice Roberts

delivered a straightforward opinion that held that this case involved “school speech,” despite the fact that the “speech” did not take place at school and that the student had not been in attendance at school that day.¹² The court also found that Morse was reasonable in interpreting the banner as advocating illegal drug use.¹³ The court further held that Frederick was not engaged in political speech that would merit protection under *Tinker*. Instead, it recognized the nature of the relationship between schools and students, stating that “the constitutional rights of students in public schools are not automatically coextensive with the rights of adults in other settings.” From this basis, the court concluded that public school officials may restrict student speech at a school event when the speech is viewed as promoting illegal drug use.¹⁴

Morse v. Frederick stands for the proposition that, in restricting student speech, public school officials enjoy greater latitude and protection from potential civil rights liability, especially where the speech relates to a danger that is “serious and palpable,” such as student drug use.¹⁵

FOURTEENTH AMENDMENT: PARENTS INVOLVED IN COMMUNITY SCHOOLS V. SEATTLE SCHOOL DISTRICT NO. 1

While the *Morse* case may have garnered the media spotlight, two cases involving racial balancing stand to perhaps make the most significant impact on America’s public schools. The Supreme Court consolidated the cases of *Parents Involved in Community Schools v. Seattle School District No. 1* and *Meredith v. Jefferson County Board of Education* in order to address the practice of using race to determine which public schools certain children may attend. These cases arose out of public school student assignment plans in Seattle, Wash., and Louisville, Ky., respectively. Each plan permitted district officials to permit or deny school assignment and transfer requests based on the stu-

dent's race and the racial composition of the schools affected. In other words, a student might be denied his or her choice of school, or a transfer to that school or another school, depending on the student's race, as well as the racial composition of the schools involved.

“ These cases made it clear that schools and the courts needed to actively work toward eliminating all vestiges of segregation. ”

Beginning with *Brown v. Board of Education* in 1955, the Supreme Court has considered a number of cases involving race and student assignment. In *Brown*, the court overturned *Plessy v. Ferguson*, holding that “in the field of public education the doctrine of ‘separate but equal’ has no place.”¹⁶ School districts responded with varying degrees of enthusiasm by adopting solutions for integration which included busing and redistricting. After *Brown* came *Green v. County Sch. Bd. of New Kent County*¹⁷ and *Swann v. Board of Education*.¹⁸ In *Green*, the Supreme Court held that students needed more than “freedom of choice” for their right to equal protection to be satisfied.¹⁹ In *Swann*, the court upheld a lower court's use of racial quotas and ratios as a “starting place” for desegregation, held that schools need not be color-blind in determining the assignment of teachers, and further held that a student assignment plan is not acceptable simply because it appears to be neutral, where it fails to counteract the continuing effects of past segregation.²⁰ These cases made it clear that schools and the courts needed to actively work toward eliminating all vestiges of segregation.

The Supreme Court subsequently considered whether school admissions decisions may be made based solely on race in *Regents of University of California v. Bakke*.²¹ In that case, a white man sued when he failed to gain admission to medical school. He alleged that he was denied admission because the university prevented him from competing for the 16 (out of 100) seats in the class that were reserved for “disadvantaged minority” students. He argued that his denial was based solely on his race and that this was a denial of equal protection. The court applied strict scrutiny to the policy and held that the university had illegally denied Mr.



Bakke the opportunity to compete for admission to medical school based solely upon his race. The court stated that race may be used as a factor in selecting a student body, but only as a factor, and only where the use of race to achieve an integrated student body is necessitated by the lingering effects of past discrimination.²²

In 2003, the Supreme Court in *Grutter v. Bollinger*²³ held that the University of Michigan Law School had a compelling interest in attaining a diverse student body and that its admissions policy was narrowly tailored to meet that requirement where a student's race was considered only as a “plus” in his or her application file. As such, the admissions policy was found to pass the strict scrutiny analysis.²⁴ Another 2003 case, *Gratz v. Bollinger*,²⁵ involved the admissions policy of an undergraduate college at the University of Michigan. Under that system, the admissions office would assign to each under-represented minority applicant 1/5th of the total “points” required for admission. The Supreme Court found that this system failed to withstand strict scrutiny as it was not narrowly tailored to achieve diversity, and it lacked the emphasis on individual applicants which was present in *Grutter*.²⁶

In *Parents Involved in Community Schools*,²⁷ the Supreme Court held that both school assignment plans in question were illegal. Writing for a plurality, but not a majority, Chief Justice Roberts wrote that neither school district had identified a compelling interest to satisfy strict scrutiny. The chief justice stated that the Seattle and Louisville school districts had failed to establish that they were remedying the effects of past discrimination or that their policy was narrowly directed to achieve diversity in the same way that the University of Michigan had in *Grutter*.²⁸ The chief justice went on to hold that racial balancing in itself is not a compelling interest.²⁹

“In the future, public school districts seeking to use race as a factor in school assignment or transfer decisions will be called upon to make a greater showing that such a factor is truly necessary....”



In the future, public school districts seeking to use race as a factor in school assignment or transfer decisions will be called upon to make a greater showing that such a factor is truly necessary to achieve diversity and that other methods to do so have failed. Further, the Supreme Court has given the clear signal that it will no longer defer to school officials seek-

ing to use racial classification in school assignment plans.³⁰ According to Chief Justice Roberts, “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”³¹

FIRST AMENDMENT: TENNESSEE SECONDARY SCHOOL ACTIVITIES ASSOCIATION V. BRENTWOOD ACADEMY

The Tennessee Secondary Schools Activities Association (“TSSAA”) is a voluntary association of 290 public schools and 55 independent and parochial schools from across the state of Tennessee. It is a non-profit organization with the purpose of stimulating and regulating interscholastic athletic competition among its member schools.

The dispute in *Tennessee Secondary School Athletic Association v. Brentwood Academy*³² arose out of rules governing recruitment of student athletes. Brentwood Academy is a private school member of TSSAA. TSSAA’s “recruiting rule” prohibited the use of undue influence on a student, or his or her parents, by anyone connected with the school for the purposes of securing or retaining the student for athletics. One aspect of the recruiting rule, outlined in guidance issued to member schools, is that private schools could not contact students enrolled at public schools, and vice-versa. In the late 1990s, Brentwood Academy football coach Carlton Flatt sent out a series of letters to eighth-graders who had signed enrollment contracts with Brentwood. He also invited the eighth-graders to attend practice if they wished. Several coaches from the area high schools complained to TSSAA that these students were not officially enrolled at Brentwood and that Coach Flatt was in violation of the recruiting rule. Upon investigation, the TSSAA found Brentwood Academy guilty of multiple violations of TSSAA rules, including the recruiting rule.³³

Brentwood Academy brought suit against the TSSAA alleging, among other claims, that by prohibiting its speech with the recruits, TSSAA had violated its First Amendment right to free speech. The case made its way from the U.S. District Court for the Middle District of Tennessee, through the 6th Circuit Court of Appeals to the Supreme Court not once, but

twice. On the second occasion, the district court ruled in favor of Brentwood on the First Amendment claim.³⁴ The 6th Circuit affirmed, finding that TSSAA's punishment of Brentwood for its violation of the rule, as applied, was not narrowly tailored to further the substantial interests of protecting of student athletes from exploitation, keeping athletics subordinate to academics and the leveling of the playing field among public and private schools.³⁵

The Supreme Court's opinion, authored by Justice Stephens, is short and straightforward. In it, the court compared Brentwood's free speech claim to that of an attorney who had challenged the Ohio State Bar Association's ban on in-person solicitation of injured clients by lawyers.³⁶ According to the court, "the same dangers of undue influence and overreaching that exist when a lawyer chases an ambulance are also present when a high school coach contacts an eighth grader."³⁷ The court was clear that because Brentwood had voluntarily joined the association, and because the recruiting rule was necessary for the efficient functioning of the association, there was no First Amendment violation.

LOOKING AHEAD

This term has provided much-needed guidance to America's public schools as they struggle to make the right choices for their students and staff. At the same time, each opinion also opens the door to new and difficult questions, such as whether, as it seems, school officials enjoy greater discretion in regulating student speech unless it is purely political and void of even a hint of illegal content, whether any school assignment or transfer decision with race as a component can ever pass strict scrutiny and exactly how far the Constitution permits a voluntary association of public schools to go in "regulating" its members. As the answers to these and other questions percolate out of the courts, public school officials will be watching and hoping for clear guidance and direction.

1. *Morse v. Frederick*, 551 U.S. ___, 127 S. Ct. 2618, 2622 (2007).

2. *Brown v. Board of Education*, 347 U.S. 483 (1954)

3. *Epperson v. Arkansas*, 393 U.S. 97 (1968).

4. *Meredith v. Jefferson County Board of Education*. Supreme Court Case No. 05-915.

5. *Parents Involved in Community Schools v. Seattle School District No. 1*. Supreme Court Case No. 05-908.

6. *Parents Involved in Community Schools v. Seattle School District No. 1*, 551 U.S. ___, 127 S. Ct. 2738 (2007).

7. *Tennessee Secondary School Activities Association v. Brentwood Academy*, 551 U.S. ___, 127 S. Ct. 2489 (2007).

8. *Morse*, supra at 2622.

9. Principal Morse was also sued in her individual capacity under 42 U.S. §1983, and the 9th Circuit upheld the finding of personal liability.

10. *Morse*, supra at 2623.

11. *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969).

12. *Morse*, supra at 2624.

13. *Id.* at 2624-2625.

14. *Id.* at 2625-2629.

15. *Id.* at 2629.

16. *Brown*, supra.

17. *Green v. County Sch. Bd. of New Kent County*, 391 U.S. 430 (1968).

18. *Swann v. Board of Education*, 402 U.S. 1(1971).

19. *Green*, supra at 437.

20. *Swann*, supra.

21. *Regents of University of California v. Bakke*, 438 U.S. 265 (1978).

22. *Regents of University of California*, supra at 316.

23. *Grutter v. Bollinger*, 539 U.S. 306 (2003).

24. *Grutter*, supra at 334.

25. *Gratz v. Bollinger*, 539 U.S. 244, 276 (2003).

26. *Gratz*, supra at 276.

27. *Parents Involved in Community Schools v. Seattle School District No. 1*, supra.

28. 127 S. Ct. at 2752-2761.

29. *Id.* at 2758-2759.

30. *Id.* at 2766-2768.

31. *Id.* at 2768.

32. *Tennessee Secondary School Activities Association*, 551 U.S. ___, 127 S. Ct. 2489 (2007).

33. *Id.* at 2492-2493

34. *Id.*; *Brentwood Academy v. Tennessee Secondary School Activities Association*, 442 F.3d 410, 419 (6th Cir. 2006).

35. *Id.*; 442 F.3d at 427.

36. *Id.* at 2493-2494, citing, *Ohralik v. Ohio State Bar Association*, 436 U.S. 447 (1978).

37. *Id.* at 2494-2495.

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A Primer on Sexual Harassment Claims Under Title IX

By Jerry A. Richardson

Lawsuits alleging that students have been sexually harassed by school employees or fellow students have burgeoned in recent years. One commentator has characterized sexual harassment as “the most frequent subject of lawsuits in the educational system.”¹ The Supreme Court has likewise noted that “[t]he number of reported cases involving sexual harassment of students in schools confirms that harassment unfortunately is an all too common aspect of the educational experience.”²

Because sexual harassment of students is a violation of Title IX,³ attorneys interested in pursuing and defending such claims should make sure they are familiar with the two seminal opinions of the Supreme Court dealing with claims under Title IX, *Gebser v. Lago Vista Independent School District*⁴ and *Davis v. Monroe County Board of Education*.⁵ Oklahoma attorneys should also be familiar with the subsequent decisions of the 10th U.S. Circuit Court of Appeals interpreting those cases, which are discussed in this article.

TITLE IX

Congress enacted Title IX as part of the Education Amendments of 1972.⁶ The statute provides, in relevant part, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance”⁷ Although Congress specified only an administrative method of enforcement when it enacted Title IX,⁸ the Supreme Court held in the 1979

decision of *Cannon v. University of Chicago*⁹ that Title IX’s anti-discrimination mandate is enforceable through an implied private right of action. The court observed that Congress had two purposes in enacting Title IX. First, Congress wanted “to avoid the use of federal resources to support discriminatory practices.” Second, Congress intended “to provide individual citizens effective protection against those practices.”¹⁰ The court reasoned that allowing a private litigant to bring an individual claim was more sensible than requiring such person to pursue the statutory remedy of seeking the administrative termination of federal funding.¹¹

In *Franklin v. Gwinnett County Public Schools*,¹² the court held that money damages may be recovered in an action brought to enforce Title IX. The court emphasized that the question of what remedies are available under a statute that provides a private right of action is “analytically distinct” from the question of whether such a right of action exists in the first place.¹³ Noting that Congress had not indicated any intention to limit the remedies available under

Title IX either before or after the court's decision in *Cannon*, the court concluded that "federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute."¹⁴

The Supreme Court has consistently treated Title IX as legislation enacted under Congress' Spending Clause power.¹⁵ Spending Clause legislation "operates much in the nature of a contract; in return for federal funds, the States agree to comply with federally imposed conditions."¹⁶ As the decisions in *Gebser* and *Monroe* make clear, the contractual nature of Title IX was central to the court's analysis of when an educational institution could be held liable for damages under Title IX.¹⁷

SEXUAL HARASSMENT BY SCHOOL EMPLOYEES:

Gebser v. Lago Vista Independent School District

In *Gebser*, the Supreme Court was faced with the issue of when a school district may be held liable in damages for the sexual harassment of a student by a teacher. In an opinion by Justice Sandra Day O'Connor, the court established a two-part test, holding that a school district can

not be liable in such circumstances unless a school official with the authority to institute corrective measures on the school district's behalf "has actual notice of, and is deliberately indifferent to, the teacher's misconduct."¹⁸

The plaintiffs in *Gebser* filed suit against the school district after a high school teacher initiated a sexual relationship with a female student. During the course of the relationship, parents of other students complained to the high school principal that the teacher had used inappropriate language in class. The teacher denied that he had said anything inappropriate but went on to apologize and promise that it would not happen again. The principal cautioned the teacher to be careful about his comments, but he did

not report the matter to the school district's superintendent. A few months later, a police officer discovered the teacher and student engaging in sexual intercourse. The school district terminated the teacher, and the State of Texas revoked his teaching license.¹⁹

The plaintiffs argued that courts faced with Title IX claims should follow common law agency principles in the same way courts look to agency law in considering sexual harassment claims in the employment context.²⁰ The plaintiffs contended that liability could be imposed under Title IX based on the theory of *respondeat superior* because the teacher's authority over the student facilitated the harassment. In the alternative, the plaintiffs argued that liability should be imposed based on constructive notice because the school district "should have known" about the teacher's wrongful conduct.²¹



Citing the contractual nature of Title IX, the Supreme Court rejected both of these arguments. The court observed that it would "frustrate the purposes" of Title IX to permit recovery of damages in the absence of actual notice of wrongdoing on the part of a school official.²² The court noted that when Congress "attaches conditions to the award of federal funds under its spending power," the court focuses on ensuring that the recipient of such funds has received notice that it may be held liable for failure

to comply with the condition.²³ The court reasoned that if a school district could be held liable for a teacher's sexual harassment of a student based on principles of constructive notice or *respondeat superior*, the school district itself – the actual recipient of the funds – would be unaware of the discriminatory conduct.²⁴ The court also noted that under the statute's express

“During the course of the relationship, parents of other students complained to the high school principal that the teacher had used inappropriate language in class.”

means of enforcement – the administrative withholding of federal funds – no such action may be taken until an “appropriate person” is first notified of the noncompliance and, presumably, given the opportunity to voluntarily comply with Title IX’s requirements.²⁵ The court concluded that Congress could not have intended to authorize a damages remedy against a funding recipient “where the recipient is unaware of discrimination in its programs.”²⁶ Therefore, the court held that a damages remedy will not lie against a school district under Title IX unless “an official of recipient entity with authority to take corrective action to end the discrimination” has “actual notice of discrimination in recipient’s programs and fails adequately to respond.”²⁷

As the second prong of the two-part test announced in *Gebser*, the court held that the school official’s response to wrongdoing must be so inadequate as to “amount to deliberate indifference to discrimination.”²⁸ The court pointed out that the administrative enforcement scheme contemplates that an official refuses to bring the funding recipient into compliance with Title IX after being advised of a violation. The court explained that “[t]he premise ... is an official decision by the recipient not to remedy the violation.”²⁹ The court concluded that requiring plaintiffs to establish that the school district was deliberately indifferent would insure that funding recipients would be held liable in damages only “for its own official decision” and not for its employees’ independent acts of misconduct.³⁰

Applying the foregoing analytical framework to the facts before it, the court concluded that the plaintiffs could not prevail. The court noted that the only official alleged to have had any information about the teacher’s misconduct was the high school principal, who had received the complaint from some parents that the teacher had made inappropriate comments in class. The court characterized this allegation as “plainly insufficient to alert the principal to the possibility that [the teacher] was involved in a sexual relationship with a student.”³¹

SEXUAL HARASSMENT BY FELLOW STUDENTS:

Davis v Monroe County Board of Education

Approximately a year and a half after *Gebser* was decided, the Supreme Court handed down its decision in *Davis v. Monroe County Board of Education*.³² Justice O’Connor again wrote the

majority opinion,³³ which concluded that a school district can be held liable for student-on-student sexual harassment if it “acts with deliberate indifference to known acts of harassment in its programs or activities,” and if the harassment “is so severe, pervasive, and objectively offensive that it effectively bars the victim’s access to an educational opportunity or benefit.”³⁴

The plaintiff in *Davis* alleged that her fifth grade daughter was subjected to repeated acts of sexual harassment over the course of several months by one of her classmates. The plaintiff alleged that her daughter reported each of the incidents to her teacher, and that the plaintiff herself contacted the elementary school principal to complain. The plaintiff alleged that the harassing student was never disciplined by the school district, although he was ultimately charged with, and pleaded guilty to, sexual battery.³⁵

The court framed the issue in *Davis* as “whether the misconduct identified in *Gebser* – deliberate indifference to known acts of harassment – amounts to an intentional violation of Title IX, capable of supporting a private damages action, when the harasser is a student rather than a teacher.”³⁶ The court noted that both Title IX’s regulatory scheme and the common law have put schools on notice that they have an obligation to protect students from discrimination at the hands of certain third parties. But the court cautioned that both the deliberate indifference standard and the language of Title IX “narrowly circumscribe” the set of persons whose known acts of sexual harassment can trigger a duty to respond.³⁷ The court explained that a funding recipient can be held liable for known sexual harassment committed by a third party only in “circumstances wherein the recipient exercises substantial control over both the harasser and the context in which the known harassment occurs.”³⁸

Turning to the facts before it, the court pointed out that the actions of the harassing student occurred during school hours and on school grounds. The court stated that in such a setting, the board exercised significant control over the harasser, noting that the state’s power over public school children “is custodial and tutelary, permitting a degree of supervision and control that could not be exercised over free adults.”³⁹

The court cautioned that it was not suggesting that school districts could avoid liability under Title IX “only by purging their schools of actionable peer harassment.” The court explained that the deliberate indifference standard will allow administrators to continue to enjoy the flexibility they require in dealing with student disciplinary matters, noting that “the recipient must merely respond to known peer harassment in a manner that is not clearly unreasonable.”⁴⁰

The court also emphasized that Title IX was not intended to subject school districts to liability for “simple acts of teasing and name-calling,” even where such comments were based on differences in gender. “Rather, in the context of student-on-student harassment, damages are available only where the behavior is so severe, pervasive, and objectively offensive that it denies its victim the equal access to education that Title IX is designed to protect.”⁴¹



TENTH CIRCUIT DECISIONS SUBSEQUENT TO *GEBSER* AND *DAVIS*

The 10th Circuit has issued published decisions dealing with allegations of peer sexual harassment, *Murrell v. School District No. 1, Denver, CO*,⁴² and sexual harassment by a teacher, *Escue v. Northern Oklahoma College*.⁴³ These decisions provide important additional guidance regarding how federal courts within the 10th Circuit will assess sexual harassment claims under Title IX.

In *Murrell*, a developmentally and physically disabled female high school student was repeatedly sexually assaulted by one of her classmates. Although the victim’s mother had expressed fear for her daughter’s safety when she enrolled her daughter, the special education teachers did not advise the mother when a sexually aggressive fellow student with significant disciplinary and behavioral problems began to engage in sexually inappropriate con-

duct with the victim. Ultimately, this student sexually assaulted the victim on multiple occasions. Although the teachers became aware of these events, they informed the victim’s mother only that her daughter had suffered a non-sexual battery. When the mother learned from her daughter that she had been sexually assaulted, she telephoned the principal and left a message on her answering machine. The school did not undertake an investigation, and when the daughter returned to school, she was again battered by the male student and ridiculed by her classmates.⁴⁴

The 10th Circuit discussed the Supreme Court’s recent decision in *Davis* and concluded that a plaintiff attempting to state a Title IX claim for peer sexual harassment must allege four factors: “She must allege that the district (1) had actual knowledge of, and (2) was deliberately indifferent to (3) harassment that was so severe, pervasive and objectively offensive that it (4) deprived the victim of

“ The school did not undertake an investigation, and when the daughter returned to school, she was again battered by the male student and ridiculed by her classmates. ”

access to the educational benefits or opportunities provided by the school.”⁴⁵ The court declined to name job titles for school officials who would be an appropriate person under the first two elements, noting that such a determination is “necessarily a fact-based inquiry” because school officials’ roles may vary from district to district.⁴⁶ The court concluded that under *Davis*, however, “a school official who has authority to halt known abuse, perhaps by measures such as transferring the harassing student to a different class, suspending him, curtailing his privileges, or providing additional supervision, would meet this defini-

tion.”⁴⁷ The court found “little room for doubt” that the high school principal, the highest ranking administrator at the school site, had sufficient control over the harassing student to be an appropriate person. The court therefore held that actual notice to the principal, combined with the allegation that the principal was deliberately indifferent to such information, satisfied the first two elements under *Davis*.⁴⁸ The court also noted that in cases of sexual harassment by a fellow student, it is possible that teachers exercise sufficient control and authority over the harassing student to take corrective action.⁴⁹

The court summarily concluded that the allegations of abuse suffered by the victim were sufficiently severe, pervasive and objectively offensive to satisfy the third element. Noting that the victim had been hospitalized as a result of the assaults and was now being educated as a home bound student, the court also concluded that the alleged actions of the school district had deprived her of educational benefits. The court reversed the dismissal of the plaintiff’s Title IX claim and remanded that claim to the lower court.⁵⁰

In *Escue v. Northern Oklahoma College*, the 10th Circuit affirmed the grant of summary judgment to the defendant on the plaintiff’s Title IX claim. The plaintiff in *Escue* was a female college student who alleged that one of her professors sexually harassed her by touching her inappropriately and making sexual comments to her.⁵¹ After the college president was notified of these allegations, he allowed the plaintiff to transfer out of one of the professor’s classes and finish the other class in mid-semester with her then current grade. At the conclusion of its investigation, the college determined

to terminate its relationship with the professor at the end of the semester.⁵²

The plaintiff alleged that the college president was aware of other incidents of misconduct that predated the alleged harassment of the plaintiff in 2002. The plaintiff alleged that in 1993, two students had lodged sexual harassment complaints against the professor. One student reported that he had called her “butch” on numerous occasions; the other student asserted that he had once slapped her buttocks. The plaintiff also alleged that the president had received an anonymous letter in 1995 or 1996

“...received an anonymous letter in 1995 or 1996 reporting that the professor had dated one of his students.”



reporting that the professor had dated one of his students. The professor subsequently admitted during his deposition that he had, in fact, previously dated two students, both of whom were older, non-traditional students.⁵³

Citing the Supreme Court’s decision in *Gebser* and its previous decision in *Murrell*, the court stated that liability is imposed in this situation “(1) ‘only if the [school] remains deliberately indifferent to acts of harassment of which it has actual knowledge,’ ... (2) the harassment was reported to ‘an appropriate person ... with the authority to

take corrective action to end the discrimination,’ ... and (3) the harassment was ‘so severe, pervasive and objectively offensive that it ... deprived the victim of access to the educational benefits or opportunities provided by the school.’”⁵⁴

Turning to the issue of actual knowledge, the 10th Circuit stated that by focusing on knowledge of discrimination “in the recipient’s pro-

gram,” the Supreme Court in *Gebser* “implicitly decided that harassment of persons other than the plaintiff may provide the school with the requisite notice to impose liability under Title IX.”⁵⁵ The court observed that although “actual notice requires more than a simple report of inappropriate conduct by a teacher,” the lower federal courts have generally held that *Gebser* is satisfied by “actual knowledge of a substantial risk of abuse to students based on prior complaints by other students.”⁵⁶ The 10th Circuit concluded that the prior instances of misconduct by the professor “were ‘too dissimilar, too infrequent, and/or too distant in time’ to provide the [college] with actual knowledge of sexual harassment in its programs.”⁵⁷

The 10th Circuit also rejected the plaintiff’s contention that the college had responded with deliberate indifference to her allegations against the professor. The court acknowledged that the college could have taken more aggressive action against the professor, but it concluded that the actions taken by the college were “timely and reasonable measures to end the harassment.”⁵⁸ Concluding that the college’s actions were not “clearly unreasonable in light of the known circumstances,” the 10th Circuit held as a matter of law that the college was not deliberately indifferent to the harassment suffered by the plaintiff.⁵⁹

SUMMARY

The key issue in analyzing a claim of sexual harassment under Title IX is whether *the school district itself* has discriminated against the plaintiff on the basis of sex. The contractual nature of Title IX requires that a funding recipient must be guilty of discrimination before liability may be imposed. *Gebser* establishes that liability under Title IX cannot be based on a theory of *respondeat superior* or constructive notice. Thus, the fact that a plaintiff can show that he or she has suffered sexual harassment at the hands of a school employee does not mean that such plaintiff has a valid Title IX claim. Unless the plaintiff can show that an appropriate school official with authority to institute corrective action had actual notice that students faced a substantial risk of harassment, and responded to that knowledge with deliberate indifference, a Title IX claim will not lie.

Likewise, a plaintiff who has suffered sexual harassment at the hands of one or more classmates must show that an appropriate school official with authority to stop the abuse had actual knowledge of the harassment and was

deliberately indifferent. If a student has been victimized by one or more classmates, but cannot show actual notice and deliberate indifference by an appropriate school official, a Title IX claim will not succeed.

The 10th Circuit has established that if a plaintiff can clear those two hurdles, he or she must also show that the harassment was so severe, pervasive and objectively offensive that it denied the victim access to educational benefits or opportunities. In a case such as *Gebser*, involving a consummated sexual relationship between a teacher and a student, it will not be difficult for a victimized plaintiff to make this showing. In a case of peer harassment, on the other hand, courts will take care to insure that the plaintiff has, in fact, suffered a compensable injury and is not seeking recovery for mere teasing or name calling.

As the authorities discussed in this article make clear, imposing liability on a school district or other educational institution under Title IX is not an easy task. Given that the private right of action under Title IX is merely implied rather than expressed, perhaps this is not surprising. As the court noted in *Gebser*, the fact that Title IX imposes a high hurdle does not affect a plaintiff’s right of recovery under state tort law or under 42 U.S.C. § 1983.⁶⁰ But as Justice O’Connor stated, until Congress expressly creates a cause of action for sex discrimination in education, liability under Title IX will require a showing of actual notice and deliberate indifference.

1. Robin K. Carlson, Comment, *If You’ve Been Kissed, Who Do You Tell? Notice of Sexual Harassment Under a Title IX Claim*, 42 Washburn L.J. 185 (2002).

2. *Gebser v. Lago Vista Independent School District*, 524 U.S. 274, 292 (1998).

3. 20 U.S.C. §§ 1681 *et seq.*

4. *Id.*

5. 526 U.S. 629 (1999).

6. 86 Stat. 373.

7. 20 U.S.C. § 1681(a).

8. 20 U.S.C. § 1682.

9. 441 U.S. 677 (1979).

10. *Id.* at 704.

11. *Id.* at 705-06.

12. 503 U.S. 60 (1992).

13. *Id.* at 66.

14. *Id.* at 70-71.

15. See *Davis v. Monroe County Board of Education*, 526 U.S. 629, 640 (1999) (citing cases).

16. *Id.* at 640, quoting *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 17 (1981).

17. The lower federal courts have uniformly held that a Title IX claim may only be asserted against an educational institution and not against individuals. See *Clay v. Board of Trustees of Neosho County Community College*, 905 F. Supp. 1488, 1495 (D. Kan. 1995) (noting that “Title IX actions may only be brought against an educational institution, not an individual acting as an administrator or employee for the institution.”), and *Soper ex rel. Soper v. Hoben*, 195 F.3d 845, 854 (6th Cir. 1999) (concluding that individual defendants were properly dismissed from Title IX claim because the Supreme Court has held that “only recipients of federal funds may be liable for damages under Title IX.”).

18. *Gebser*, 524 U.S. at 277.

19. *Id.* at 278.
20. *Id.* at 281-82.
21. *Id.* at 282-83.
22. *Id.* at 285.
23. *Id.* at 287.
24. *Id.* at 287-88.
25. *Id.* at 288.
26. *Id.* at 285.
27. *Id.* at 290.
28. *Id.*
29. *Id.*
30. *Id.*

31. *Id.* at 291.
32. 526 U.S. 629 (1999).

33. Although the makeup of the Court was the same in both decisions, Justice O'Connor was the only Justice who joined in both majority opinions. Chief Justice Rehnquist and Justices Kennedy, Scalia, and Thomas joined the majority in *Gebser* and dissented in *Davis*. Justices Stevens, Souter, Ginsburg, and Breyer dissented in *Gebser* but joined the majority opinion in *Davis*.

34. 526 U.S. at 633.

35. *Id.* at 633-34.

36. *Id.* at 643.

37. *Id.* at 644.

38. *Id.* at 645.

39. *Id.* at 646, quoting *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 655 (1995).

40. *Id.* at 648-49.

41. *Id.* at 652.

42. 186 F.3d 1238 (10th Cir. 1999).

43. 450 F.3d 1146 (10th Cir. 2006).

44. *Murrell*, 186 F.3d at 1243-44. Because the district court had granted the defendants' motion to dismiss, the Tenth Circuit construed as true all of the factual allegations set forth in the plaintiff's complaint. *Id.* at 1243.

45. *Id.* at 1246.

46. *Id.* at 1247.

47. *Id.*

48. *Id.* at 1247-48.

49. *Id.* at 1248.

50. *Id.* at 1248-49.

51. *Escue*, 450 F.3d at 1149.

52. *Id.* at 1150.

53. *Id.* at 1150-51.

54. *Id.* at 1152.

55. *Id.* at 1153.

56. *Id.* at 1154, citing *Doe v. Sch. Admin. Dist. No. 19*, 66 F.Supp.2d 57, 62 (D. Me. 1999), and *Doe A. v. Green*, 298 F.Supp.2d 1025, 1033 (D. Nev. 2004).

57. *Id.* at 1153, quoting the district court's summary judgment order.

58. *Id.* at 1155, quoting *Wills v. Brown Univ.*, 184 F.2d 20, 25 (1st Cir. 1999).

59. *Id.* at 1155.

60. *Gebser*, 524 U.S. at 292.

ABOUT THE AUTHOR



Jerry A. Richardson is of counsel with the Tulsa firm Rosenstein, Fist & Ringold. He attended the University of Arkansas where he earned a B.A. in 1980 and a J.D. in 1983. He is licensed to practice in Oklahoma, Arkansas, before the 10th Circuit Court of Appeals, and before the U.S. Supreme Court. His practice primarily involves motions and appeals with an emphasis on education law.

The Second Annual William J. Holloway, Jr. Lecture

of the Oklahoma City Chapter of the Federal Bar Association

presented by

The Honorable Patrick E. Higginbotham
United States Court of Appeals for the Fifth Circuit

October 22, 2007 Skirvin Hilton Ballroom

5:30 Reception 6:30 Dinner/Program

The Federal Bar Association presents an annual lecture by a leading legal scholar in honor of Judge William J. Holloway, Jr. of the U.S. Court of Appeals for the Tenth Circuit. FBA members may reserve a place for themselves and a guest for \$70 per person. For non-members and their guests, the price is \$90 per person.

To register, please RSVP by October 15, 2007 to Lindsey Esplin at lindsey.esplin@crowedunlevy.com or at (405) 234-3259. Please send checks (payable to Federal Bar Association) to Anne Zachritz at 100 N. Broadway, Suite 3300, Oklahoma City, OK 73102. With your check, include the name, address and e-mail of each person attending. To join the Federal Bar Association, visit <http://www.fedbar.org>.

The Oklahoma Bar Association Family Law Section seeks nominees for the following awards to be presented at its annual meeting on November 9, 2007.

Outstanding Family Law Attorney for 2007

Outstanding Family Law Judge for 2007

The Phil and Noel Tucker Outstanding Guardian Ad Litem Award for 2007

Nominees should have made significant contributions to the practice of family law in Oklahoma in 2007, or over an extended period of time. Please submit your nominations and a brief description of the reasons for your nomination by **October 19, 2007**, to: OBA Family Law Section, Nominations and Awards, c/o David A. Tracy, 1701 S. Boston Ave., Tulsa, Oklahoma 74119. For additional information, call Bill Wiles at 405-522-8766 or in-state toll free at 800-522-8210.

NOTICE OF PUBLIC HEARING

The Physician Advisory Committee, an advisory committee to the Workers Compensation Court, will hold a public hearing on **Friday, October 12, 2007** at 1:00 p.m. at the Oklahoma Workers Compensation Court, 1915 N. Stiles, Oklahoma City, Oklahoma.

The purpose of the hearing shall be to receive public comments and/or proposals, including views or arguments, regarding the Committees proposed **Treatment Guidelines for the Upper Extremity Treatment** and changes to the **Guidelines for Prescription of Opioid Medications for Acute and Chronic Pain**. Copies of the proposed guidelines may be obtained at the Court's web site, <http://www.owcc.state.ok.us/>, under the "What's New" link.

Written comments may be submitted to the Physician Advisory Committee, c/o Bill Wiles, Workers Compensation Court, 1915 N. Stiles, Oklahoma City, OK 73105. For additional information, call Bill Wiles at 405-522-8766 or in-state toll free at 800-522-8210.

Taxation Law Section

2007 Oklahoma Tax Legislation

By *Sheppard F. Miers Jr.*

Legislation enacted in the 2007 session of the Oklahoma Legislature included the changes summarized below, which are some of the new state laws on taxation.

INCOME TAX

Rate Reduction Accelerated

The maximum rate of Oklahoma income tax on individuals is reduced from 5.55 percent to 5.50 percent for 2008, and from 5.50 percent to 5.25 percent for 2009. The maximum rate remains 5.25 percent in subsequent years. SB 861, §7, amending 68 O.S. Supp. 2006, § 2355; effective Jan. 1, 2008.

Revenue Determination for Rate Reduction

The authorization of the State Board of Equalization to determine revenue growth required for income tax rate reductions is modified to correspond with the accelerated rate reductions enacted. SB 685, §2; amending 68 O.S. Supp. 2006 § 2355.1A.; effective Nov. 1, 2007.

Child Care Credit

The child care income tax credit is amended to allow a credit against Oklahoma income tax of 20 percent of the credit for child care expenses allowed under the Internal Revenue Code or 5 percent of the child tax credit allowed under the Internal Revenue Code, whichever credit is greater. The credit is not allowed for any taxpayer who has federal adjusted gross income in excess of \$100,000. SB 861, § 8; amending 68 O.S. 2001, § 2357; effective Jan. 1, 2008.

Oklahoma Capital Gain Deduction

The deduction for capital gain realized on the sale of capital assets in Oklahoma is clarified. The deduction is allowable for the sale of intangible personal property (goodwill) as part of a sale of all or substantially all assets of an Oklahoma company, limited liability company or partnership or of a sole proprietorship of an individual taxpayer. The holding period of another individual or entity for capital gain is

included in a taxpayer's holding period if such additional period is included in the taxpayer's holding period pursuant to the Internal Revenue Code. SB 685, § 3; amending 68 O.S. Supp. 2006, § 2358. D., F.; effective Jan. 1, 2008.

Oklahoma College Savings Plan Deduction

The deduction allowed for contributions to accounts under the Oklahoma College Savings Plan Act is amended to provide for reduction of the deduction and inclusion in income for taxpayers who elect to take a rollover to any other Section 529 plan or certain non-qualified withdrawals from the taxpayer's account. SB 854, § 1; amending 68 O.S. Supp. 2006, § 2358.18; effective July 1, 2007.

Human Organ Donation Deduction

An income tax deduction of up to \$10,000 is allowed to an individual if such individual or a dependent of such individual, while living, donates one or more human organs to another human being for human organ transplantation. SB 806, § 10; amending 68 O.S. Supp. 2006, § 2358; effective Jan.1, 2008.

Federally Regulated Investment Companies

An income tax exemption is allowed for federally regulated investment companies that meet certain prescribed definitional and other requirements and are licensed by the U.S. Small Business Administration or the U.S. Department of Agriculture. SB 806, §§ 8, 9; adding 68 O.S. Supp. 2007, §§2357.65A, 2357.76A; effective Nov. 1, 2007.

SALES AND USE TAX

Sales Tax Holiday

Sale of an article of clothing or footwear shall be exempt from sales tax if the (1) sales price of

the article is less than \$100, and (2) the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at midnight on the following Sunday, covering a period of three days. The exemption does not apply to special clothing or footwear primarily designed for athletic activity or protective use and is not normally worn except when used for athletic activity or protective use. The exemption does not apply to accessories, including jewelry, handbags, luggage, umbrellas, wallets, or similar items. The exemption does not apply to rental of clothing or footwear. City and county taxing authorities are statutorily mandated to allow the same exemption. SB 861, § 3; adding 68 O.S. Supp. 2007, § 1357.10; effective July 1, 2007; SB 861, §§4, 5, 6, amending 68 O.S. Supp. 2006, §1370; adding 68 O.S. Supp. 2007, § 1377; and amending 68 O.S. Supp. 2006, § 2701; effective July 1, 2007.

Governmental and Charitable Exemptions

Sales tax exemptions are enacted for a variety of not-for-profit related sales, which includes the sale of advertising in travel brochures and other promotional materials produced at the direction of the Oklahoma Tourism and Recreation Department; sales of boxes of edible staple food items by a church or 501(c)(3) exempt organization that is organized for the primary purpose of feeding needy individuals or to encourage volunteer service required to purchase food; sales of tangible personal property or services to any person with whom a church has entered into a construction contract necessary for performance of the contract, including sales to subcontractors; sales of tangible personal property or services used exclusively for charitable or educational purposes to or by an organization providing for and helping developmentally disabled individuals; sales to exempt organizations that are shelters for abused, neglected or abandoned children, subject to certain age limits; sales to licensed child care centers meeting certain standards; sales of items to a military personnel mothers organization that are sent overseas to a combat zone with such exemption allowed as a refund; and special events sales at events sponsored by a 501(c)(3) church organization. SB 806, §§5, 7, amending 68 O.S. Supp. 2006, §§1356, 1364.2; effective Nov. 1, 2007.

Sales Tax Exemption Business Reorganization

The sales tax exemption allowed for organization of a corporation, limited liability company or partnership, is clarified to be applied

to the value of a person's ownership interest in the entity if it is substantially in proportion to the value of the person's interest in the property transferred by all former owners. SB 685, § 1; amending 68 O.S. 2001, § 1360; effective Jan. 1, 2008.

Sales to Electronic Repair Business

A sales tax exemption is allowed for sales of tangible personal property or services to a business primarily engaged in the repair of consumer electronic goods, including all phones, computers, and other devices sold to the business from original manufacturers, and are repaired, refitted or refurbished for sale to retail consumers by the entity or sold to another business entity for resale to retail customers. HB 1544, § 1; amending 68 O.S. Supp. 2006, § 1357; effective July 1, 2007.

Oil Lease Electricity Exemption

The exemption from sales tax for sales of electricity to the operator of an oil lease using enhanced recovery methods is to be allowable if the total content of oil recovered after use of the enhanced recovery methods does not exceed 1 percent by volume. A 10 barrels per day oil well production limit on allowance of the exemption is removed from the statute. SB 119, § 1; amending 68 O.S. Supp. 2006, § 1357; effective May 16, 2007.

Foreign Sales

The sales tax exemptions for sales for resale of tangible goods, products and certain agricultural sales are amended to provide that for sales to a point of delivery for use and consumption in a foreign country, a buyer is responsible for providing documentation showing the foreign point of delivery if the vendor is not in the business of shipping the items sold. SB 806, § 4.6; amending 68 O.S. Supp. 2006, § 1352, and 68 O.S. 2001, §1358.1; effective Nov. 1, 2007.

Sales Tax Relief Claims

The time for filing a claim for sales tax relief by a credit on an income tax return may be extended until the time of filing the income tax return if the taxpayer is granted an extension of time to file the income tax return. SB 1076, § 15; amending 68 O.S. 2001, § 5013; effective Nov. 1, 2007.

Streamlined Sales and Use Tax System

Amendments are enacted to change the statutory provisions providing for the Streamlined Sales and use Tax System to conform to provi-

sions of the agreement with other states related to the system. SB 1076, §§ 4-11; amending 68 O.S. Supp. 2006, §§1352, 1354, 1354.27, 1354.30, 1354.32, 1357, 1361; and adding 68 O.S. Supp. 2007, § 1354.35; effective Nov. 1, 2007.

GROSS PRODUCTION TAX

Three Tiered Rate Extended

The three tiered rate structure of the gross production tax (oil, 7 percent when average price equals or exceeds \$17 per barrel; gas, 7 percent when average price equals or exceeds \$2.10 per mcf; 4 percent when oil exceeds \$14 per barrel or gas exceeds \$1.75 per mcf; and 1 percent when oil is less than \$14 per barrel or gas is less than \$1.75 per mcf) is extended through June 30, 2010. HB 1718, § 1; amending 68 O.S. Supp. 2006, § 1001.B; effective July 1, 2007.

Economically At-Risk Leases

The reduced gross production tax rate of 1 percent for production from certified economically at risk oil or gas leases is extended to apply to production through calendar year 2010. HB 1718, § 2; amending 68 O.S. Supp. 2006, § 1001.3a; effective July 1, 2007.

Gas Marketing Costs Deduction

Producers of natural gas and casinghead gas are to be allowed to deduct marketing costs from gross value of production subject to the gross production tax. The deductible marketing costs are nonproduction costs incurred by the producer to enable the transport of gas from the well to the market, including costs of compressing, dehydrating and sweetening gas sold, as well as costs for delivering gas to the purchaser. Certain additions may be made to deductible marketing costs including depreciation or rental fees for a marketing facility, a 6 percent return on producer owned investment, direct or allocated labor costs and costs of material, supplies, maintenance, repairs and fuel associated with a marketing facility. Costs incurred in gas production, normal lease separation of gas or condensate, or insurance premiums on a marketing facility are not deductible. HB 1485, § 3; adding 68 O.S. Supp. 2007, § 1001.4; effective Jan. 1, 2008.

FRANCHISE TAX

Franchise Tax Exemption

A franchise tax exemption is provided for small corporations. If computed franchise tax liability is \$250 or less, the corporation is exempt from franchise tax. The prior law

exemption threshold was \$10 or less. SB 861, § 1; amending 68 O.S. § 1205.B; effective Jan. 1, 2008.

AD VALOREM TAX

Retirement Community Facility Exemption

The ad valorem tax exemption for a facility that is a continuum of care retirement community providing housing for the aged, licensed under Oklahoma law, owned by a 501(c)(3) tax-exempt entity, is amended to apply to certain facilities completed or partially to fully constructed, on particular dates as described in the statute. HB 1562, § 1; amending 68 O.S. Supp. 2006, § 2887(8)(b); effective Jan. 1, 2008.

Mineral Exploration Personal Property Valuation

All taxable personal property used in the exploration of oil, natural gas or other minerals, including drilling equipment and rigs, is to be assessed annually at the net value set forth in the first Hadco International monthly bulletin published in the tax year, using the appropriate depth rating assigned to the equipment by the manufacturer and actual condition of the rig. HB 1485, § 1, amending 68 O.S. Supp. 2006, § 2817; effective Jan. 1, 2008.

Disabled Veteran Personal Property Exemption

State Question 735 is referred by the Legislature to voters for approval of a constitutional amendment to exempt household personal property of 100% of disabled veterans and their spouses from ad valorem tax. HB 1808 referring State Question 735 to voters to add a new Section 8D to Article 10 of the Oklahoma Constitution. Effective Jan. 1, 2009, if approved by voters..

Multi-County Property

When improvements upon residential real property are divided by a taxing jurisdiction (county) line, such improvements are to be valued and assessed in the taxing jurisdiction in which the physical majority of the improvements are located. SB 72, § 1; amending 68 O.S. Supp. 2006, § 2817; effective Jan. 1, 2008.

Manufacturing Facility Five Year Exemption

The five year ad valorem tax exemption for new manufacturing facilities is amended to apply to distribution centers as defined in the statute, that involves an initial investment of at least five million dollars, employment of at least 100 full-time employees, and payment of wages or salaries to employees at a wage which

equals 175 percent of the federal minimum wage. Construction must commence within three years of the effective date of the new exemption and be completed within three years thereafter. SB 798, § 1; amending 68 O.S. Supp. 2006, § 2902; effective Nov. 1, 2007.

Tax Sale Payment

The payment for property sold in a tax sale may be made in cash or certified funds. SB 806, § 12; amending 68 O.S. 2001, § 3135; effective Nov. 1, 2007.

Personal Property Value Reporting; Appeal

The Ad Valorem Tax Code provision stopping a taxpayer's right to protest valuation of personal property to the board of equalization in cases where a taxpayer fails or refuses to permit inspection of property or comply with a *subpoena duces tecum* is amended to provide that it shall not impair or impede a taxpayer's right to appeal any order of the board of equalization to the district court. HB 1485, § 2; amending 68 O.S. 2001, § 2945; effective Jan. 1, 2008.

Filing for Interstate Transit Exemption

The time for filing a claim with a county assessor for the exemption from ad valorem tax for property moving through the state in interstate commerce is amended to be, that during the year in which the tax is due, on or before March 15, or within 30 days after receipt by the taxpayer, a notice of valuation increase, whichever is later. SB 685, § 5, amending 68 O.S. Supp. 2006, § 2902.2; effective Jan. 1, 2008.

TAX PROCEDURE

Taxpayer Transparency Act

A Taxpayer Transparency Act is enacted to provide funding for the Office of State Finance to develop and operate a Web site accessible to the public that shall include information on state revenue, expenditures, incentive payments and information on state tax preferences. The new Web site is to be operational no later than Jan. 1, 2008. SB 1, §§ 1, 2; adding 62 O.S. Supp. 2007, § 46; and amending 68 O.S. Supp. 2006, § 205; effective Nov. 1, 2007.

Credit Card Payment Service Charge

A service charge that may be added by the Tax Commission for credit card payment of taxes is no longer subject to a limit of four percent of the payment. SB 1076, § 3; amending 68 O.S. Supp. 2006, § 218; effective Nov. 1, 2007.

Note: The author acknowledges assistance he received on this Note from Alicia Emerson, Senior Policy Analyst, Research Division, Oklahoma Senate.

ABOUT THE AUTHOR

Sheppard F. Miers, Jr. is a shareholder in the Tulsa office of Gable & Gotwals and practices in the areas of federal and state taxation. He serves as State Liaison of the Oklahoma Bar Association Taxation Law Section for 2007.

United States District Court Western District of Oklahoma

You are cordially invited to the formal swearing in of

Timothy D. DeGiusti
as United States District Judge

Tuesday • October 9, 2007 • 2:00 p.m.

The Honorable Robin J. Cauthron, Chief Judge, Presiding
United States Courthouse, Ceremonial Courtroom - Third Floor
200 Northwest Fourth Street, Oklahoma City, Oklahoma

Reception to Follow

2007 OBA Award Winners

Wednesday, Nov. 7

Law School Luncheons

**Outstanding Senior Law
School Student Award**

OCU – Joshua Brannon

OU – (to be announced)

TU – Misty Watt

○○○○○○○○○

Thursday, Nov. 8

OBA CLE Plenary Session

8:50 a.m.

Earl Sneed Award

*for outstanding continuing legal
education contributions*

Ben Brown, Oklahoma City



Annual Luncheon

Thursday, Nov. 8

12 Noon

OBA Artist of the Year

(will be announced at the luncheon)

Judicial Excellence Award

*for excellence of character, job performance or achievement
while a judge and service to the bench, bar and community*

Judge Ray Dean Linder, Alva

Judge Sam A. Joyner, Tulsa

Liberty Bell Award

*for nonlawyers or lay organizations for promoting or
publicizing matters regarding the legal system*

Oklahoma Educational

Television Authority,

Oklahoma City

Joe Stamper Distinguished Service Award

*to an OBA member for long-term service to the bar association
or contributions to the legal profession*

Winfrey Houston, Stillwater

Alma Wilson Award

*for a lawyer who has made a significant contribution to
improving the lives of Oklahoma children*

Denny Johnson, Tulsa

Golden Gavel Award

*for OBA Committees and Sections performing with
a high degree of excellence*

OBA Member Services Committee, Debra Charles, Chair

Neil E. Bogan Professionalism Award

to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession

Judge Bana Roberts, Oklahoma City

John E. Shipp Award for Ethics

to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession

Sidney G. Dunagan, Oklahoma City

○○○○○○○○○ **Friday, Nov. 9 • General Assembly** ○○○○○○○○○

9 a.m.

Trailblazer Award

to an OBA member or members who by their significant, unique visionary efforts have had a profound impact upon our profession and/or community and in doing so have blazed a trail for others to follow

John Green,
Oklahoma City

Hicks Epton Law Day Award

for individuals or organizations for noteworthy Law Day activities

Payne County
Bar Association

Pontotoc County
Bar Association

Outstanding Service to the Public Award

for significant community service by a lawyer

Frank D. Hill, Oklahoma City
Don Shaw, Idabel

Outstanding County Bar Award

for meritorious efforts and activities

Carter County
Bar Association

Oklahoma County
Bar Association

Outstanding Young Lawyer Award

for a member of the OBA Young Lawyers Division for service to the profession

Keri Williams, Stillwater

Outstanding Pro Bono Service

John Hermes, Oklahoma City
Lewis N. Carter, Tulsa

Maurice Merrill Golden Quill Award

for best Oklahoma Bar Journal article

Karen Youngblood, Lawton

OBA Governance

2008 Transitions

2007 President

Stephen D. Beam, Weatherford



Stephen D. Beam is a sole practitioner in Weatherford. He received a B.A. from OSU and a J.D. degree from OU College of Law. He is admitted to practice before the U. S. District Court for the Western District of Oklahoma, the U. S. District Court for the Northern

District of Texas, the Fifth Circuit of the U. S. Court of Appeals, the Supreme Court of the State of Oklahoma and the United States Supreme Court. He is a member and past president of the Custer County Bar Association. He has been a member of the Finance Committee since 1997, chair of the Social Committee since 1985, and delegate to the OBA Convention in 1990, 1991, 1996, and 1999. Mr. Beam was 2003 OBA vice president. He was a member of the OBA Board of Governors from 1995 to 1997, and again since 2004. He was a member of the Board of Editors of the Oklahoma Bar Journal from 1997 to 2003, and he was a member of the OBA Management Assistance Program from 1997 to 2002. He was chair of the OBA Solo and Small Firm Committee from 1999 to 2002 and a member of the Planning Committee from 2002 to 2006. He was co-chair in 1999, 2001, 2002 and 2003, and chair in 2000 of the OBA Convention Task Force. He was a member of the OBA Long-Range Planning Committee in 1999 and 2004. He was treasurer in 1999, secretary in 2000, chair-elect in 2001, and chair in 2002 of the OBA General Practice Section. He was a member of the OBA

Disaster Response and Relief Committee from 1990 to 1995 and a member of the OBA Legal Ethics and Unauthorized Practice of Law Committee from 1991 to 1995. He was a member of the Access to Justice Advisory Committee for 2006 and chair of the Audit Committee for 2006. He was a member of the Communications Task Force for 2006, chair of the Strategic Finances Task Force for 2006, and a member of the National Mock Trial Task Force from 2004 to 2006. He was chair of the Budget Committee for 2006 and was a member of the Mentoring Committee from 2004-2006. Mr. Beam is a sustaining Fellow of the Oklahoma Bar Foundation. Mr. Beam is also a member of the Oklahoma Trial Lawyers Association and the Oklahoma Criminal Defense Lawyers Association. He was the recipient of the OBA Golden Gavel Award in 1999 and in 2004, the 2000 ABA General Practice Award, Solo and Small Firm Section GP Link Bar Association Project of the Year Award and the 1999 OBA Solo and Small Firm Conference and YLD Mid-Year Meeting Award. He was chair of the Centennial Task Force from 2002 to 2004. He received the President's Award for 2001 and 2003, and he was named Solo Lawyer of the Year in 2003.

2008 President

J. William Conger, Oklahoma City



OCU General counsel and distinguished lecturer in law; of counsel and founder of Hartzog Conger Cason & Neville, Oklahoma City; OU, B.A., 1967; Louisiana State University School of Law, 1967-68; OU College of Law, J.D., 1971; mem-

ber of OBA, Oklahoma County Bar Association and ABA; member of OBA Board of Governors, 2003-2005, vice president 2006; recipient, 2004 John E. Shipp Award for Ethics; recipient, 2004 President's Award for Outstanding Service to the OBA; chair, OBA Task Force on Tort Reform; chair, Bar Center Facilities Committee; vice chairman, Bench and Bar Committee(2005); member, Access to Justice Advisory Committee; member, Work/Life Balance Committee; Oklahoma County Bar Association past president and former director; former chair of Oklahoma County Bar Law Day Committee and Fee Grievance and Ethics Committee; former chair of Oklahoma County Bar Legal Aid Fundraising Drive; member of Oklahoma County Bar Task Force for Work/Life Balance and numerous other county bar committees; trustee and benefactor fellow of Oklahoma Bar Foundation; fellow, American College of Trial Lawyers; fellow of American Bar Foundation; master emeritus of William J. Holloway Jr. Inn of Court; past president, past counselor, former member of Executive Committee of William J. Holloway Jr. American Inn of Court; recipient of Presidents Award, 1999; Service Award, 2000; Presidents Award, 2001; Professionalism Award, 2002; past president, board of trustees of Heritage Hall School, past trustee of Heritage Hall School; former director, Speck Home for Boys; member of Oklahoma Museum of Art Legacy Campaign; recipient, Professor of the Year, OCU School of Law (2004-2005).

2008 Nominees

President-Elect

Jon K. Parsley, Guymon



Jon K. Parsley is a sole practitioner in Guymon, Oklahoma. He received a Bachelor's degree from Central State University in Edmond in 1991. Mr. Parsley received his Juris Doctor Degree from the University of Oklahoma College of Law. He was admitted to the Oklahoma Bar

Association in 1994. His practice is very general with an emphasis in litigation. He is also admitted to practice before the U.S. District

Court for the Western District of Oklahoma. Mr. Parsley was the chairperson of the OBA Young Lawyer's Division in 2002. He was then elected as the Governor from District 4 and served on the OBA Board of Governors from 2004-2006. Mr. Parsley is a member of the American Bar Association, Oklahoma Trial Lawyers Association, and the American Association for Justice. Mr. Parsley is a benefactor fellow of the Oklahoma Bar Foundation.

Vice President

Michael C. Mordy, Ardmore



Mike Mordy received his undergraduate degree from the University of Oklahoma and earned his J.D. from Oklahoma City University Law School. He has practiced civil law in Ardmore since 1983. He is past president of the Carter County Bar Association

and has served on the OBA Board of Governors from 2004-2006. He will serve on the Oklahoma Bar Foundation Board of Trustees beginning Jan. 1, 2008. He is married to Christy, and they have two grown children who live in Denver and San Francisco.

Supreme Court Judicial District Two

Jerry L. McCombs, Idabel



Received his undergraduate degree in English from Central State University and his law degree from Oklahoma City University. He has been in the private practice of law since 1975. He is currently a senior partner in LeForce & McCombs PC, a seven-lawyer

firm located in Idabel and founded in 1994. He has practiced in many areas of the law, but is now engaged primarily in trial work. McCombs' legal career has included two terms on the

Oklahoma Council on Judicial Complaints and service as a board member on the Oklahoma Bar Foundation. He is a member of the Oklahoma and Arkansas bar associations and is admitted to federal practice in Oklahoma, Arkansas and Texas. He and his wife, Joyce, live in Idabel where McCombs was born and raised. They have two children and four grandchildren.

Supreme Court Judicial District Nine

W. Mark Hixson, Yukon



Mark Hixson is a native Oklahoman in private practice in Yukon. He received his B.A. from Conception College, Conception, Mo., in 1989 and his J.D. from the University of Oklahoma in 1992. He is a Canadian, Kingfisher and Blaine County Indigent Defense

Contractor and the Yukon Juvenile Defender. Mr. Hixson was a special judge for Oklahoma City Municipal Court from 1997 – 2002. He was honored as the OBA Outstanding Young Lawyer in 1998. He is a two-time Canadian County Bar Association President in 1997 and 1998 (1997 Outstanding County Bar Association); a member of the OBA House of Delegates, 1996-2002, 2004, 2006-2007; and is a Benefactor Fellow of the Oklahoma Bar Foundation. He is a member or has been a member of the Communications Task Force, 2006-2007; Criminal Law Committee, 1997-2002, 2002 vice chairman; Rules of Professional Conduct Committee, 1998-2006; Ethics Committee, 2003-2005; Strategic Planning Committee, 1999-2001; Litigation Section, 2003 chairman, Planner/Moderator Litigation Track CLE, 2003, 2004; Family Law Section; Criminal Law Section; Oklahoma Criminal Defense Lawyers Association; and the U.S. Supreme Court Historical Society. Mr. Hixson is a member of St. John Nepomuk Parish, Yukon, where he is a lector, a Knight of Columbus and Kindergarten soccer coach for St. John Nepomuk School. He is a member of the First Families of the Twin Territories, Oklahoma Genealogical Society; member of the Oklahoma Historical Society, an instructor for

the Canadian County Reserve Officer Training Academy, 1996-current; and sits on the Canadian County Community Sentencing Planning Council, 2004-current. He has appeared in "Who's Who in America," "Who's Who in American Law" and "Who's Who in American Law Schools." He is a lifetime member of the National Eagle Scout Association. Mr. Hixson has been an Oklahoma High School Mock Trial scoring panelist, 1995-1999, 2001, 2004-2007; Yukon High School Mock Trial team attorney-coach, 2000, 2002; regional finals Judge, National Law School Trial Competition, 2002; and a judge for the OU moot court competition, 1991, 1995-2001.

Supreme Court Judicial District Nine

O. Christopher Meyers II, Lawton



O. Christopher Meyers, born Shawnee, May 6, 1944; Education; University of Oklahoma - B.B.A. (finance and accounting) 1966; University of Oklahoma - J.D. 1969; Georgetown University - L.L.M. (in taxation) 1972; certified public accountant. Admitted

to practice before the Oklahoma Supreme Court and all other Oklahoma courts; U.S. Tax Court, U.S. Court of Claims; U.S. District Courts in Oklahoma, Texas and Arkansas, 10th and 8th U.S. Circuit Courts of Appeal; U.S. Supreme Court. Member Comanche County Bar Association (president 1980); Oklahoma Bar Association (president Taxation Section 1988); Member Founding Board of Directors of Oklahoma Bar Professional Liability Insurance Company; American Bar Association; Oklahoma Trial Lawyers Association; Oklahoma Society of Certified Public Accountants.

Member-At-Large

Jack L. Brown, Tulsa



Jack Brown is the hiring partner and vice president of Tulsa law firm of Jones, Gotcher and Bogan PC with practice emphasis in business law and litigation, individual and corporate trusts, estate planning/probate law. In these areas, he has provided representation

to clients for over 20 years. He also provides clients with management of other counsel engaged for complex litigation and specialized matters. Throughout his career as an attorney in private practice, he has served in leadership positions in both service to the public and to the legal profession. He currently serves as chair of the OBA Bench and Bar Committee through 2007. Received "AV" rating from Martindale-Hubbell in 1989 and was appointed by the Oklahoma Supreme Court to serve on a lawyer staffed panel of the Oklahoma Court of Appeals in 1993. Elected to American Bar Association Board of Governors in 1993; appointed vice-chair Program and Planning Committee in 1995-96; former liaison to Young Lawyers Division, Standing Committee on the Law Library of Congress, Steering Committee on the Unmet Legal Needs of Children, Section of Legal Education Commission to Assess the Standards for Accreditation of Law Schools, Standing Committee on Legal Assistants, and Section of Urban, State and Local Government Law. Appointed by Mayor Rodger Randle to five-year term on the Tulsa Metropolitan Utility Authority and City of Tulsa Utility Board in 1988. These entities establish rates and make

policy for the water and sewer utilities serving the greater Tulsa metropolitan area. Board chairperson in 1992, also chaired Board Finance and Planning Committees. Elected to OBA Board of Governors in 1992, and served as chairperson of Young Lawyers Division. Elected to the ABA House of Delegates by Tulsa County Bar Association for 1997-1998; re-elected for term 1999-2000; and re-elected for term 2001-2002; appointed ABA Judicial Division alternate delegate 2003. Appointed to ABA Judicial Division Lawyers Conference; chair 2003-2005; past chair of the Judges Network, a nationwide Web-based delivery mechanism of programming on public trust and confidence in the U.S. system of justice, 2000-2004. Appointed by Gov. David Walters to Oklahoma Task Force on Volunteerism in 1991. Selected to Hillcrest Healthcare Foundation Board in 1992, and served as chair of corporate underwriting committee in 1993-94 and president in 1994-95 of Associates Program. Appointed to vice-chair Blue Ribbon Task Force of the OBA in 1997 to develop and implement a mandatory post admission program for new bar admittees. Selected to Legal Services of Eastern Oklahoma Inc. Board of Directors in 1998 and led merger with Western Oklahoma program in 2001 to create Legal Aid Services of Oklahoma, with service continuing as president for 2006; served as past chair of Foundation fund-raising committee which successfully raised \$1 million in a three-year campaign, and chair of Long-Range Planning Committee, and chair of Budget and Audit Committee; chair Executive Director Search Committee (twice). Received the 2001 Pro Bono Award for devoting significant community service on the Board of Directors for Legal Services of Eastern Oklahoma, the Long-Range Planning Committee, the Foundation Committee of the Campaign for Legal Services, and the Joint Committee on Consolidation.

2007 House of Delegates

Delegate certification should be sent to OBA Executive Director John Morris Williams in order for names to appear in print in the bar journal and to be included in the House of Delegates agenda book.

COUNTY	DELEGATE	ALTERNATE
ADAIR.....	Ralph F. Keen II.....	Kathryn René Morton
ALFALFA.....	Marcus Andrew Jungman.....	
ATOKA.....	Pethi C. Hayes-Gabbard.....	Judge. J. Douglas Gabbard II
BEAVER.....	Jerry Lee Venable.....	Christopher Todd Trippet
BECKHAM.....	Brian Joseph Henderson.....	Thomas R. Pixton
BLAINE.....	Daniel G. Webber.....	F. Douglas Shirley
BRYAN.....	Payton L. Phelps.....	Don Michael Haggerty II
CADDO.....		
CANADIAN.....	W. Mark Hixson.....	Sharon Gayle Fore
	Roger D. Everett.....	Judge Edward C. Cunningham
	Khristan K. Strubhar.....	Gregory Kyle Parker
CARTER.....	Michael Charles Mordy.....	Darryl F. Roberts
	Judge Thomas S. Walker.....	Mary Elizabeth Clark
CHEROKEE.....	Jerry Scott Moore.....	Mackenzie Hamilton Jessie
CHOCTAW.....	John Brandon Hill.....	Alan Michael Perry
CIMARRON.....	Stanley Ed Manske.....	Judge Ronald L. Kincannon
CLEVELAND.....	Judge Stephen W. Bonner.....	John Howard Graves
	Sandee Coogan-Sutter.....	Roger Owen Housley
	Janis Grant-Johnson.....	Holly Rachelle Iker
	Henry Nicholas Herbst.....	Debra Deann Loeffelholz
	Golda Renee Long.....	Sara Weer McFall
	Jan Meadows.....	Ralph Blaine Nice Jr.
	James Earl Pence.....	Benjamin Houston Odom
	Robert Lee Pendarvis.....	Amelia Sue Pepper
	Gary Alan Rife.....	Cindee Pichot
	Micheal Charles Salem.....	David Eugene Ponder
	Richard Dean Stevens.....	Tracy Erin Schumacher
	Margaret Lynn Stockwell.....	John Hunt Sparks
	Warren Craig Sutter.....	Gerald Blake Virgin Jr.
	Michael David Tupper.....	Richard Henry Wall
	Judge Lori M. Walkley.....	
	James A. Drummond.....	
COAL.....	Trae Gray.....	D. Clay Mowdy
COMANCHE.....	Dietmar K. Caudle.....	John Daniel Munkacsy Jr.
	Chandra L. Holmes-Ray.....	Gene Scott Ray
	Orin Chris Meyers II.....	Charity Dawn Stubblefield
COTTON.....	Kathleen Flanagan.....	Michael Charles Flanagan
CRAIG.....	O.B. Johnston III.....	Kent Ryals
CREEK.....	Lauren L. Allison.....	Judge Richard A. Woolery
	Michael Alan Souter.....	Charles D. Watson Jr.
CUSTER.....	Donna Lynn Dirickson.....	Debra Annett

DELAWARE.....	Lee Griffin Eberle	Christianna L. Wright
DEWEY.....	Judge Rick M. Bozarth	Judge Robert William Collier
ELLIS.....	Joe Lee Jackson	Laurie E. Hays
GARFIELD.....	Randy James Long	David G. Trojan
	David C. Henneke.....	Bradley A. Gungoll
GARVIN.....	Daniel Thomas Sprouse	Judge John Alexander Blake
GRADY.....		
GRANT.....	Judge Jack D. Hammontree Jr.	Harvey Joe Bush
GREER.....		
HARMON.....	David L. Cummins	Judge Winford Mike Warren
HARPER.....	Judge G. Wayne Olmstead	Murray Marcus Holcomb
HASKELL.....	Thomas H. Conklin III	
HUGHES.....	Robert Leo Irby	James Andrew Simms
JACKSON.....	John Holman Weigel	Judge Carol S. Mollison
JEFFERSON.....	William Wayne Eakin	James Harley Ivy
JOHNSTON.....	Chad Doyle Upton	Laura Jane Corbin
KAY.....	Christin Paige Lee	Todd Rogene Burlie
	David Ross Bandy	Kenneth Wayne Lee
KINGFISHER.....		
KIOWA.....	Thomas Welborne Talley	Anthony George Mitchell
LATIMER.....	F. Nils Raunika.....	Douglas G. Dry
LEFLORE.....	Randy H. Lawson	S. Stephen Barnes
LINCOLN.....	Gregory A. Upton	
LOGAN.....	Timothy Wayne Green	Jeffrey L. Hirzel
LOVE.....	Richard A. Cochran Jr.	Paulé Thrift Haggerty
MAJOR.....	Judge N. Vinson Barefoot.....	Mitchell Aaron Hallren
MARSHALL.....	Judge Richard Allan Miller	Jeffrey Scott Landgraf
MAYES.....	Sharon Kay Phillips	James D. Goodpaster
MCCLAIN.....	Bob A. Smith	Leland Woodyard Shilling
MCCURTAIN.....	Judge Michael D. DeBerry	Jerry L. McCombs
MCINTOSH.....		
MURRAY.....	Phil S. Hurst.....	Judge John H. Scaggs
MUSKOGEE.....	Chad Alexander Locke.....	Larry Gene Vickers Jr.
	Carman D. Rainbolt	Ponie Lance McCrary
	James Richard McClure	John C. Williams III
NOBLE.....	Sherry Wallace DeBord	
NOWATA.....		
OKFUSKEE.....		
OKLAHOMA.....	Charles F. Alden III.....	Alan Wesley Bardell
	Judge Robert E. Bacharach	Sheila Diane Barnes
	Julie Elaine Bates	William Todd Blasdel
	Hugh Alan Baysinger	Ashley Anne Bowen (Murphy)
	Timothy J. Bomhoff	Debra Ann Charles
	Michael Wayne Brewer	Mark Anthony Clayborne
	M. Courtney Briggs	Stephen A. Coleman
	Judge Kenneth L. Buettner	Gary Wayne Derrick
	Benjamin J. Butts	Nicholle Jones Edwards
	George W. Dahnke	Kenneth B. Felker
	Timothy D. Degiusti	Keith French Givens
	Judge Bryan C. Dixon	Timothy Robert Henderson
	Charles E. Geister III.....	Judge Philippa Carol James
	Sally Gilbert.....	Celeste T. Johnson

	Kevin Dell Gordon	Myra Kaufman
	John Barnes Heatly	Heidi Jo Long
	D. Renee Hildebrant	Leslie Lynn Lynch
	Judge Carol Partee Hubbard	Shanda Marie McKenney
	Judge Glenn Martin Jones	John Edward Miley
	James Allen Kirk	Daniel John Morgan
	David W Kisner	Tracy Pierce Nester
	Laura H. McConnell-Corbyn	Amy Jo Pierce
	Judge Earl Bay Mitchell III.	Timothy Earl Rhodes
	Page Price Morgan	Richard Alan Riggs
	John W. Norman	Richard Lawrence Rose
	Travis A. Pickens	Linda L. Samuel-Jaha
	Judge Vicki L. Robertson	Randall Lee Sewell
	Larry M. Spears	Robert Noel Sheets
	Rex Kent Travis	Jennifer Lee Thompson
	Judge Allen J. Welch	James Reid Webb
OKMULGEE	Lou Ann Moudy	Javier Ramirez
OSAGE.....	Jesse J. Worten III.	Steven George Venturi
OTTAWA	Charles W. Chesnut	Erik Christopher Johnson
PAWNEE	Shannan Gwen Tucker	
PAYNE	Keri Gayle Williams	Susan Colleen Worthington
	Cory Thomas Williams	James Von Murray
	Katherine Elder Thomas	Jodie Lyn Gage
PITTSBURG	Michael W. Hogan	Brett Daniel Cable
PONTOTOC.....	Deresa Carol Gray Clark	Jason David Christopher
	Kaycie Michelle Sheppard	T. Walter Newmaster
POTTOWATOMIE		
PUSHMATAHA	James Thomas Branam	Jacqueline Jo Perrin
ROGER MILLS	F. Pat Versteeg	Newell E Wright Jr.
ROGERS	Larry Ernest Rahmeier	
	Leslie A. Ellis Kissinger	
SEMINOLE.....	R. Victor Kennemer II.	William Donald Huser
SEQUOYAH.....	Kent S. Ghahremani	John Thomas Cripps III
STEPHENS.....		
TEXAS.....	Jon K. Parsley	Megan L. Kennedy (Simpson)
TILLMAN.....	Bradford Lee Benson	Clyde H. Amyx II
TULSA.....	S. Douglas Dodd	James Travis Barnett
	Larry D. Leonard	Christopher Lincoln Camp
	Thomas Patrick Nally	Stephen James Greubel
	Ronald Main	Shelton Lynn Benedict
	William Brad Heckenkemper	Lori Moon Kastner
	Steven Kent Balman	David Michael Thornton Jr.
	Renee DeMoss	Keith Allen Jones
	Robert B. Sartin	Gregory Guilbert Meier
	John Reuben Woodard III	Vivian Cooper Hale
	Patrick Dennis O'Connor	William Edward Farrior
	D. Faith Orlowski	Theodore Payne Gibson
	Sharon L. Corbitt	Kurt George Glassco
	Phil Frazier	Jack Lawrence Brown
	James Robert Gotwals	Matthew Richard Dowdell
	Mark W. Dixon	John Thomas Hall
	Martha Rupp Carter	Chad Christopher Taylor
	Allen M. Smallwood	John Christopher Davis
	Hugh V. Rineer	Robert Poindexter Coffey Jr.
	Anne Bullock Sublett	Trisha Linn Archer
	Ronald N. Ricketts	Dale Kenyon Williams Jr.
	Leonard I. Pataki	Molly Anne Bircher

	Karen Eileen Langdon	Blake Rodman Givens
	Belinda Darlene Crutchfield	Mary Katherine Saunders
	William George LaSorsa	Dwight Lee Smith
	Kenneth Leonard Brune	Julie Ann Evans
	Judge Charles R. Hogshead.....	Barbara Jean Eden
	C. Michael Zacharias	
	Judge Millie E. Otey	
	David Edward Winslow	
	Robert S. Farris	
WAGONER.....	Kenneth A. Hicks	
WASHINGTON.....		
WASHITA.....	Christopher S. Kelly	Walter Scott Mason III
WOODS.....	Larry L. Bays	Ronald Wayne Bittle
WOODWARD.....	Jean Lea Foard	Bryce L. Hodgden

JUDICIAL CONFERENCE

	<i>DELEGATES</i>	<i>ALTERNATES</i>
District Judge	Judge J. Michael Gassett	Judge Richard G. VanDyck
Associate District Judge	Judge Mickey J. Hadwiger	Judge Norman L. Russell

MEMBERS AT LARGE (Past Presidents)

William R. Grimm
 Michael D. Evans
 Harry A. Woods Jr.
 Melissa DeLacerda
 Gary C. Clark
 Charles D. "Buddy" Neal Jr.
 M. Joe Crosthwait Jr.
 Douglas W. Sanders Jr.
 John A. Gaberino Jr.
 William J. Baker
 J. Duke Logan
 Sidney G. Dunagan
 Bob W. Rabon
 Andrew M. Coats
 R. Forney Sandlin
 Michael Burrage
 Anthony M. "Tony" Massad
 Burke Bailey
 David K. Petty
 James R. Eagleton
 Judge Paul M. Vassar
 John L. Boyd
 Leslie L. Conner Jr.
 William G. Paul
 C.D. Northcutt
 Judge Thomas R. Brett
 Winfrey D. Houston



103rd

OBA Annual Meeting

Sheraton Hotel

Oklahoma City

Nov. 7-9, 2007

*All events will be held at the Sheraton Hotel
unless otherwise specified.*

TUESDAY, NOVEMBER 6

OBA REGISTRATION 4 – 7 P.M.

OKLAHOMA FELLOWS OF
THE AMERICAN BAR
FOUNDATION 6:30 P.M. – 9:30 P.M.

WEDNESDAY, NOVEMBER 7

OBA REGISTRATION 8 A.M. – 5 P.M.

OBA HOSPITALITY AREA 8 A.M. – 5 P.M.

ART SHOW REGISTRATION 8 – 11 A.M.

OKLAHOMA FELLOWS OF
THE AMERICAN BAR
FOUNDATION 8:30 A.M. – 9:30 P.M.

BOARD OF BAR EXAMINERS 8:30 A.M. – NOON

OBA/CLE SEMINAR 8:30 A.M. – 5 P.M.

*See seminar program for speakers
and complete agenda*

CRIMINAL LAW
FAMILY LAW
TRANSACTIONAL LAW
NUTS & BOLTS
LITIGATION

OU COLLEGE OF LAW
ALUMNI RECEPTION
AND LUNCHEON 11:15 A.M. – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT
AWARD
Alicia Currin-Moore

TU COLLEGE OF LAW
ALUMNI LUNCHEON NOON – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT
AWARD
Misty Watt

OCU COLLEGE OF LAW
ALUMNI LUNCHEON NOON – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT
AWARD
Joshua Brannon

CRIMINAL LAW SECTION
LUNCHEON.....NOON – 1:30 P.M.



David Iglesias
Former U.S. Attorney

BOARD OF GOVERNORS MEETING2 – 4 P.M.

BOARD OF EDITORS.....3:30 – 5 P.M.

PRESIDENT'S RECEPTION7 – 9 P.M.
*(Free for everyone
with meeting registration)*

PAST PRESIDENT'S DINNER.....8 – 10 P.M.

AMERICAN IDOL – OBA STYLE.....9 – 11 P.M.

THURSDAY, NOVEMBER 8

PROFESSIONALISM COMMITTEE8 – 9 A.M.

GENERAL PRACTICE/SOLO
& SMALL FIRM SECTION8 – 9 A.M.

AMERICAN COLLEGE
OF TRIAL LAWYERS.....8 – 9 A.M.

OBA HOSPITALITY AREA8 A.M. – 5 P.M.

OBA REGISTRATION.....8 A.M. – 5 P.M.

FAMILY LAW SECTION8:30 A.M. – 4 P.M.

CREDENTIALS COMMITTEE.....9 – 9:30 A.M.

OBA/CLE PLENARY
SESSION.....9 – 11:50 A.M.

EARL SNEED AWARD
Ben Brown, Oklahoma City

ESTATE PLANNING SECTION.....10 – 11:45 A.M.

RULES AND BY-LAWS
COMMITTEE10 – 10:30 A.M.

OBA RESOLUTIONS
COMMITTEE10:45 – 11:45 A.M.

OBA ANNUAL LUNCHEON
FOR MEMBERS, SPOUSES
AND GUESTSNOON – 1:45 P.M.
**(\$30 with meeting
registration)**

OBA ARTIST OF THE YEAR
(to be announced at the luncheon)

JUDICIAL EXCELLENCE AWARD
Judge Ray Dean Linder, Alva
Judge Sam A. Joyner, Tulsa

LIBERTY BELL AWARD
Oklahoma Educational Television Authority,
Oklahoma City

JOE STAMPER DISTINGUISHED SERVICE AWARD
Winfrey Houston, Stillwater

ALMA WILSON AWARD
Denny Johnson, Tulsa

GOLDEN GAVEL AWARD
OBA Member Services Committee,
Debra Charles, Chair

NEIL E. BOGAN PROFESSIONALISM AWARD
Judge Bana Roberts, Oklahoma City

JOHN E. SHIPP AWARD FOR ETHICS
Sidney G. Dunagan, Oklahoma City

PRESIDENT'S AWARDS
(to be announced)

FEATURING:



Ben Stein
Actor, Author, Lawyer

PROFESSIONALISM COMMITTEE2 – 3 P.M.

MCLE COMMISSION2 – 3:30 P.M.

REAL PROPERTY SECTION2 – 4 P.M.

LAW OFFICE MANAGEMENT
SECTION2 – 4 P.M.

LAWYERS HELPING LAWYERS
COMMITTEE3 – 4:15 P.M.

OKLAHOMA BAR FOUNDATION
BOARD OF TRUSTEES.....3 – 5 P.M.

BENCH AND BAR COMMITTEE3 – 5 P.M.

DIVERSITY COMMITTEE FORUM4 – 5 P.M.

TAXATION LAW SECTION.....4 – 6 P.M.

MINERAL LAW SECTION4 – 6 P.M.

OBA FUN WALK4 P.M. - TBA

DIVERSITY COMMITTEE
RECEPTION.....5 – 6 P.M.

OBA LAW STUDENT DIVISION5:30 – 7:30 P.M.

PRO BONO RECEPTION5:30 – 7:30 P.M.

SWEET SOUNDS OF SINATRA.....7:30 – 9 P.M.
*(Free for everyone
with meeting registration)*

ENTERTAINMENT: *Renee Anderson and Todd Clark
sing a medley of songs by
Crooner Frank Sinatra*

VIVA LAS VEGAS9 – 12 P.M.
*(Free for everyone
with meeting registration)*

SPONSOR: OBA YOUNG LAWYERS DIVISION

FRIDAY, NOVEMBER 9

PRESIDENT'S BREAKFAST.....7:30 – 9 A.M.

YLD FELLOWS BREAKFAST7:30 – 9 A.M.

AMERICAN COLLEGE OF
TRUST & ESTATE COUNSEL.....7:45 – 9:30 A.M.

OBA REGISTRATION.....8 A.M. – NOON

OBA HOSPITALITY8 A.M. – NOON

OKLAHOMA BAR ASSOCIATION
GENERAL ASSEMBLY9 – 10 A.M.

TRAILBLAZER AWARD
John Green, Oklahoma City

OUTSTANDING COUNTY BAR AWARD
*Oklahoma County Bar Association
Carter County Bar Association*

HICKS EPTON LAW DAY AWARD
*Payne County Bar Association
Pontotoc County Bar Association*

OUTSTANDING YOUNG LAWYER AWARD
Keri Williams, Stillwater

OUTSTANDING SERVICE TO THE PUBLIC AWARD
*Frank D. Hill, Oklahoma City
Don Shaw, Idabel*

OUTSTANDING PRO BONO SERVICE
*John Hermes, Oklahoma City
Lewis N. Carter, Tulsa*

MAURICE MERRILL GOLDEN QUILL AWARD

Karen Youngblood, Lawton

GENERAL ASSEMBLY

SPEAKERS:

*Chief Justice
James R. Winchester
Oklahoma
Supreme Court*



*Judge Gary L. Lumpkin
Oklahoma Court of
Criminal Appeals*

*Stephen D. Beam
President*



INDIAN LAW SECTION..... 9:30 – 11A.M.

OKLAHOMA BAR ASSOCIATION

HOUSE OF DELEGATES 10 A.M. – NOON

*J. William Conger
President-Elect, Presiding*



ELECTION OF OFFICERS & MEMBERS OF THE
BOARD OF GOVERNORS

APPROVAL OF TITLE EXAMINATION STANDARDS
RESOLUTIONS

BALLOT COMMITTEE 11 A.M. – NOON

HEALTH LAW SECTION4:30 – 6:30 P.M.

OBA/CLE Annual Meeting 2007

November 7

DAY 1

	<i>Family Law</i>	<i>Criminal Law</i>	<i>Transactional Law</i>	<i>Nuts & Bolts</i>	<i>Litigation</i>
WEDNESDAY Registration 8 - 9 a.m.	Program Planners/ Moderators Lynn Worley	Program Planners/ Moderator Ben Brown Charlie Sifers	Program Planners/ Moderators Guy Jackson	Program Planners/ Moderators LeAnne McGill	Program Planners/ Moderators Renee DeMoss
Session 1 9 - 9:50 a.m.	The Interplay Between Property Division and Support Alimony David W. Echols	The Overture: Handling Juvenile Delinquent & Youthful Offender Cases Rene Gish Ben Brown Valerie Baker Jennifer Chance	Issues with a Digital Office Jim Calloway	Anatomy of a Trial: A Dramatic Run Through J. William Conger	Choreograph for Success: Liti- gation Tactics Dos and Don'ts Judge Patricia Parrish
Session 2 10 - 10:50 a.m.	Handling the Family Law Case Involving Military Personnel - An Update Bill LaSorsa	Walk the Line: Handling a Basic DUI Case Charles Sifers Jeff Sifers	Dim the Lights: Issues in Winding Down a Law Practice Gina Hendryx (ethics)	Selecting the Best Entity for Your Firm or Business Gary W. Derrick	The Grand Finale: How to Negotiate and Settle a Case Ed Able
Session 3 11 - 11:50 a.m.	Basic Guardian Ad Litem: Now that I am Here, What Do I Do? Noel Tucker	Putting the Parts Together: Anato- my of a Criminal Case Cheryl Ramsey	Bringing Down the House: Recent Issues with Real Estate Titles TBA	Everyday Ethical Dilemmas: What Would You Do? Gina Hendryx (ethics)	A Close Up: Basic HIPAA for Litigators Teresa Burkett

12-2 p.m. LUNCH (On your own)

Session 4 2 - 2:50 p.m.	It Takes a Village: Updated Grandparental Rights Law - The Old and New Mark Zannotti	Setting the Stage: The Anatomy of a Writ and a Criminal Appeal Cindy Danner (tentative)	Critical Review: Top 10 Dos and Don'ts in Probate and Guardianship Practices Judge Linda Morrissey Judge Theresa Dreiling Judge Sheila Condren	Spotlight on Persuasion: Writing Briefs that Win Your Case Debra McCormick	Take a Cue: Electronic Discovery and Litigation Today Magistrate Judge Sam Joyner
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OBA/CLE Annual Meeting 2007

<i>cont'd</i>	<i>Family Law</i>	<i>Criminal Law</i>	<i>Transactional Law</i>	<i>Nuts & Bolts</i>	<i>Litigation</i>
Session 5 3 - 3:50 p.m.	50 Hot Tips: Technology to Improve Your Practice Panel Discussion	It's About Timing: Representing Defendants Charged in Accelerations and Revocations Cases Kent Bridge	Professor Wizard and the Magic Wiffle Dust - Avoiding an Explosion in Asset Protection Guy Jackson	Effective File Management: From Paper to Electronic Systems Jim Calloway	Handling the Talent: Cross-Examination of Expert Witnesses Ted Sherwood
Session 6 4 - 4:50 p.m.	All the World is a Stage: The Family Law Ethics Players (ethics)	Fourth Amendment Focus: A Search & Seizure Primer Jim Hughes	There Aren't Any Small Businesses, Just Small Players: Issues in Representing a Small Business David Petty	Best Practices & Strategies for Interviewing Clients and Witnesses Robin F. Fields	Give 'Em the Ole Razzle Dazzle: Use of Technology in the Courtroom Dan Morgan Don Lovy

4:50 p.m. ADJOURN

November 8

DAY TWO

THURSDAY Registration 8 - 9 a.m.		
OBA/CLE Plenary Session 9 - 11:50 a.m.	Topic: <i>Isolated Events or System Failures - A Discussion of the Williamson and Fritz Cases</i>	Panel Discussion Featuring: William Peterson, <i>Pontotoc County district attorney</i> Mark Barrett, <i>defense attorney</i> Stephen Saloom, <i>policy director for the Innocence Project</i> Dennis Fritz, <i>exonerated by DNA evidence</i> David Prater, <i>Oklahoma County district attorney</i> Christy Shepherd, <i>cousin of the murder victim</i> Chris Ross, <i>Pontotoc County first assistant district attorney</i>

2007 Annual Meeting Registration Form

Please complete a separate form for each registrant.

Name _____ E-mail _____

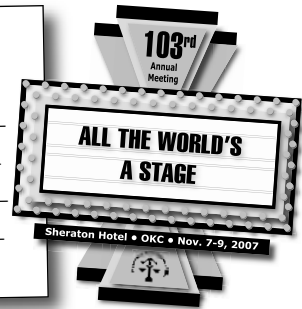
Badge Name (if different from roster) _____ Bar No. _____

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Non-Attorney Guest _____

Please change my OBA roster information to the information above. ☐ Yes ☐ No



Check all that apply:

- ☐ Judiciary ☐ OBF Fellow ☐ OBF Past President ☐ OBA Past President ☐ YLD Officer ☐ YLD Board Member ☐ YLD Past President
☐ Board of Bar Examiner ☐ 2007 OBA Award Winner ☐ Delegate ☐ Alternate ☐ County Bar President: County _____

☐ **YES! Register me for the 2007 Annual Meeting, November 7, 8 & 9, in Oklahoma City.**

Events will be held at the Sheraton Hotel. Registration fee includes continental breakfast in hospitality area, President's Reception ticket(s), The Sweet Sounds of Sinatra, convention gift, Vendors Expo, Art Contest and Viva Las Vegas Casino Night.

■ **MEMBER:** ☐ \$50 through Oct. 12; \$75 after Oct. 12 \$ _____

■ **NEW MEMBER** (Admitted after Jan. 1, 2007): ☐ Free through Oct. 12; \$15 after Oct. 12 \$ _____

■ **LAW STUDENT DIV.** ☐ \$25 through Oct. 12; \$35 after Oct. 12 \$ _____

☐ I will submit an entry (or entries) in the Art Contest. (Submit art registration form by Oct. 12.

Entry fee included in meeting registration.)

☐ I will participate in the OBA Walk that benefits Lawyers Helping Lawyers (_____ tickets @ \$10 each) \$ _____

I will be attending/participating in the following ticketed events in addition to my registration fee for Annual Meeting:

☐ **WED. & THURS.:** CLE Multitrack (_____ [0 or 1] ticket @ \$150 through Oct. 12; \$175 after Oct. 12; \$50 for new members through Oct. 12, \$75 after Oct. 12) \$ _____

and Plenary

☐ **THURSDAY & FRIDAY:** (_____ [0 or 1] ticket @ \$150 through Oct. 12; \$175 after Oct. 12; \$50 for new members through Oct. 12, \$75 after Oct. 12) ... \$ _____

CLE Plenary and Recent Developments

☐ **WED., THURS. & FRI.:** CLE (_____ [0 or 1] ticket @ \$250 through Oct. 12; \$275 after Oct. 12; \$75 for new members through Oct. 12, \$100 after Oct. 12) \$ _____

☐ **THURSDAY:** Annual Luncheon (_____ number of tickets @ \$30 each) \$ _____

☐ **FRIDAY:** President's Breakfast (_____ number of tickets @ \$20 each) \$ _____

☐ Please check here, if under the Americans with Disabilities Act you require specific aids or services during your visit to the OBA Annual Meeting. ☐ Audio ☐ Visual ☐ Mobile (Attach a written description of your needs.)

I will be attending the following ticketed events that do NOT require Annual Meeting registration:

☐ **WEDNESDAY:** Law School Luncheon – (check one) ☐ OCU ☐ OU ☐ TU
(_____ number of tickets @ \$30 each) \$ _____

☐ **THURSDAY:** I will attend the Free Mental Health CLE seminar at 3 p.m. **TOTAL \$** _____

THREE WAYS TO REGISTER

- **MAIL** this registration form with payment or credit card info to:

OBA Annual Meeting
P.O. Box 53036
Okla. City, OK 73152

■ **FAX** this registration form with credit card information to: (405) 416-7092.

■ **ONLINE** at www.okbar.org

■ **CANCELLATION POLICY** Full refunds will be given through Oct. 26. No refunds will be issued after deadline.

PAYMENT OPTIONS:

- ☐ Check enclosed: Payable to Okla. Bar Association

Credit card: ☐ VISA ☐ Mastercard

Card # _____

Exp. Date _____

Authorized Signature _____

HOTEL ACCOMMODATIONS:

Fees do not include hotel accommodations. For reservations contact: Sheraton Hotel at (405) 235-2780. Call by Oct. 15 and mention hotel code: OK BAR for a special room rate of \$89 per night. For hospitality suites, contact Craig Combs at (405) 416-7040 or e-mail: craigc@okbar.org.

2007 OBA ATTORNEY ART SHOW

REGISTRATION FORM

Deadline: Noon on Oct. 12, 2007

(No registrations will be accepted after this deadline)

Return form with

Annual Meeting registration fee to:

Oklahoma Bar Association • P.O. Box 53036 • Oklahoma City, OK 73152

Name _____

OBA Number _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

E-mail _____

I will enter ____ pieces of art, each of which are described below.

For each entry, complete in detail all information requested below. Please attach an additional sheet with all the required information for entries exceeding the space provided.

The following categories of art will be judged:

- Oil Painting
- Acrylic
- Watercolor
- Black and White Drawing
- Color Drawing
- Black and White Photograph
- Color Photograph
- Print
- Three Dimensional (sculptures, woodwork, etc.)
- Craft (tile work, stained glass, needlepoint, etc.)
- Mixed Media (screenprint, enhanced photographs, etc.)



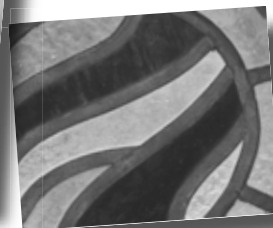
Watercolor



Pottery



Photography



Stained glass

Name of Piece	Size	Weight	Description (only needed if 3-D, Craft, or Mixed Media)



2007 OBA FUN WALK

REGISTRATION FORM

Grab your walking shoes and join the Oklahoma Bar Association and Lawyers Helping Lawyers Foundation for the first ever OBA Fun Walk during the 103rd Annual Meeting in Downtown Oklahoma City. All participants will receive a gift bag including a free pedometer. You don't have to be a lawyer to enter the Fun Walk. Everyone is encouraged to participate in this fun and beneficial event.

Fun Walk will be held on Thursday, Nov. 8 at 4 p.m. starting at the Sheraton Hotel in Downtown OKC

Cost: \$15

- Not registering for the Annual Meeting? Use this form to sign up.
- Attending the Annual Meeting? Use the meeting registration form to sign up.
- Not interesting in walking but want to contribute to the LHL Foundation? Use this form. Tax receipts will be provided.

To walk, make your check out to LHL Foundation and mail to:

Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152

Name _____ OBA Number _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

E-Mail _____

☐ I'm ready to walk.

☐ I'm skipping the walking but would like to donate.

Entry fee is non-refundable.

American Idol – OBA Style

An Annual Meeting Event
Wednesday, Nov. 7, 2007 • 9 – 11 p.m.

- Perform one song to wow celebrity judges
- Prizes for first, second & third places
- Limited to 15 individuals or groups
- Groups must include at least 1 OBA member
- Participants provide background music on CD
- OBA performers must register for the meeting

Fill out the form below.

Mail to: American Idol – OBA Style, OBA, P.O. Box 53036, OKC 73152

Fax to: 405.416.7001

Scan & e-mail to: idol@okbar.org

Name of act: _____

Your Name: _____

OBA #: _____

E-mail address: _____

If group, names of other performers:

_____ OBA # (if applicable) _____

_____ OBA # (if applicable) _____

_____ OBA # (if applicable) _____

_____ OBA # (if applicable) _____

Questions: E-mail idol@okbar.org

2008 OBA Board of Governors Vacancies

Nominating Petition Deadline was 5 p.m. Friday, Sept. 7, 2007

OFFICERS

President-Elect

Current: J. William Conger, Oklahoma City
Mr. Conger automatically becomes OBA president
Jan. 1, 2008

(One-year term: 2008)

Nominee: Jon K. Parsley, Guymon

Vice President

Current: Jack S. Dawson, Oklahoma City
(One-year term: 2008)

Nominee: Michael C. Mordy, Ardmore

BOARD OF GOVERNORS

Supreme Court Judicial District Two

Current: Michael W. Hogan, McAlester
Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, Marshall, McCurtain, McIntosh, Pittsburg, Pushmataha and Sequoyah counties
(Three-year term: 2008-2010)

Nominee: Jerry L. McCombs, Idabel

Supreme Court Judicial District Eight

Current: R. Victor Kennemer III, Wewoka
Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties
(Three-year term: 2008-2010)

Nominee: James T. Stuart, Shawnee

Supreme Court Judicial District Nine

Current: Dietmar K. Caudle, Lawton
Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman counties
(Three-year term: 2008-2010)

**Nominees: W. Mark Hixson, Yukon
O. Christopher Meyers II, Lawton**

Member-At-Large

Current: Robert B. Sartin, Tulsa
(Three-year term: 2008-2010)

Nominee: Jack L. Brown, Tulsa

Vacant positions will be filled at the OBA Annual Meeting Nov. 7 - 9. Terms of the present OBA officers and governors listed will terminate Dec. 31, 2007.

Summary of Nominations Rules

Not less than 60 days prior to the Annual Meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the Executive Director, a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such Judicial District, or one or more County Bar Associations within the Judicial District may file a nominating resolution nominating such a candidate.

Not less than 60 days prior to the Annual Meeting, 50 or more voting members of the OBA from any or all Judicial Districts shall file with the Executive Director, a signed petition nominating a candidate to the office of Member-At-Large on the Board of Governors, or three or more County Bars may file appropriate resolutions nominating a candidate for this office.

Not less than 60 days before the opening of the Annual Meeting, 50 or more voting members of the Association may file with the Executive Director a signed petition nominating a candidate for the office of President-Elect or Vice President or three or more County Bar Associations may file appropriate resolutions nominating a candidate for the office.

See Article II and Article III of OBA Bylaws for complete information regarding offices, positions, nominations and election procedure. Bylaws are printed in the OBA 2007 Reference Guide (OBJ Vol. 78, No. 4 January 27, 2007) and election information appears on pages 251-253.

Mark Your Calendar and Register Today

ANNUAL CRIMINAL LAW SECTION LUNCHEON

Petroleum Club - 100 North Broadway, Oklahoma City

Wednesday, November 7, 2007, 12:00 - 1:30 p.m.



David Iglesias, former United States Attorney, has graciously accepted our invitation to be the guest speaker at the Annual Criminal Law Section Luncheon to be held at the Petroleum Club on Wednesday, November 7th during the annual meeting of the Oklahoma Bar Association. Seating is limited so register today!

The delicious luncheon menu includes a salad, halibut and chicken, Petro potato and vegetable, rolls, crème brulee cheesecake with fresh berries and chocolate sauce, coffee, tea and water.

Registration Form

Last Name (Print) _____ First Name _____
Address _____
City _____ State _____ Zip _____
E-Mail _____ Phone (____) _____ Fax (____) _____
OBA Number: _____

Registration (Check appropriate boxes):

☐ \$18 - Criminal Law Section Member attending the luncheon ☐ \$25 after Nov. 1st
☐ \$20 per guest if accompanied by a member. Guest Name: _____
☐ \$30 - Nonmember (includes section membership for 2008) \$_____ **Total Enclosed**

Payment (Select One):

Check ____ Visa ____ MasterCard ____ Card # _____ Exp. Date _____

Signature required _____

**Remit form and payment to Jenny Barrett, Membership Coordinator
OBA, PO Box 53036, Oklahoma City, OK. 73152 or fax to (405) 416-709**

OBA MentorMatch - A New Approach to Mentoring

By Jon Parsley

The OBA Board of Governors recently voted to implement a pilot mentoring program called OBA MentorMatch that officially began in late September.

The practice of law is challenging. New attorneys need the opportunity to share in the wisdom of older attorneys. So much of what is learned about practicing law comes from learning from other attorneys. Some new attorneys are lucky enough to go into practice with a more seasoned lawyer or work in a firm with other attorneys available to act as mentors. All too often, however, attorneys are opening their own practices or are starting into new areas of practice with no where to turn. The Oklahoma Bar Association is attempting to provide some help in those situations.

In the past, the OBA has attempted to provide a mentoring program for new attorneys. Honestly, those past programs have largely failed. The OBA Mentoring Task Force was created this year by President Stephen Beam to revive and reorganize mentorship for the OBA as one of his special projects. The Mentoring Task Force has studied the programs in other states and has tried to develop a program that will stand the test of time.

The MentorMatch program will attempt to match new attorneys with mentors based on certain criteria for compatibility. The program will attempt to utilize group mentoring, individual mentoring and also limited mentoring to maximize the goals of the program. The program is designed not only for new attorneys but also for experienced attorneys who may be venturing into a new area of the law.



“The program is designed not only for new attorneys but also for experienced attorneys who may be venturing into a new area of the law.”

The program will begin with a pilot program. The goal is to make 50 matches of mentors and protégés the first year. These 50 matches will be closely monitored so that any necessary changes to the program can be made before the outright launch of the full program in 2008. Limiting the pilot program to 50 matches for the first year was a hard decision. The task force did not want to leave any protégé without a mentor. However, the lessons learned from other states led the task force to believe the limitation was the prudent course of action.

At the recent New Attorney Experience seminars in Tulsa and Oklahoma City, forms were distributed for recruiting potential protégés. Mentor recruitment began at the same time and will run through early November. It is the plan that the 50 matches will be made in late November. A match will be a commitment by the mentor and protégé for a one-year period. All persons who submit an application will be notified of whether or not they will be included in the pilot program.

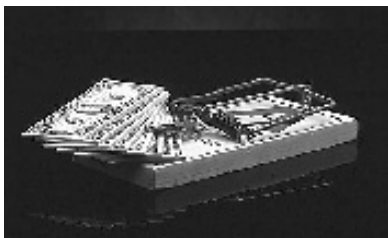
VOLUNTEERS TO MENTOR NEEDED

All attorneys wishing to become mentors are encouraged to fill out and submit a mentor application as soon as possible. The applications are available at the OBA Web site at www.okbar.org. The program provides for a one-year match with the mentor and protégé — or group of protégés. It is recommended that the mentor have at least monthly interaction with the protégés. The OBA MentorMatch handbook is also available on the OBA Web site and will be provided to all mentors and protégés. The handbook outlines proposed activities and seeks to answer common questions.

The Mentoring Task Force will follow up with each of the matches with easy to complete e-mail update forms or make contacts in other ways to make sure the matches are working. There will be a final evaluation at the end of the one-year period. The mentor and protégé match may then continue after the one-year period outside the program if the parties wish to continue the relationship.

All new attorneys or seasoned attorneys wishing to venture into a new area of practice are encouraged to complete and submit a protégé application as soon as possible. The OBA Web site at www.okbar.org is where you'll find the application. The protégé agrees to a one-year match with a mentor selected based on preferences in the application. Even if protégés are not selected for the pilot program, every effort will be made to find that person a mentor after the full launch of the program in 2008. It is hoped that the OBA MentorMatch will provide much-needed assistance to new attorneys long into the future.

Mr. Parsley practices in Guymon and chairs the Mentoring Task Force.



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Committee Bestows Spotlight Awards

By Deborah J. Bruce

Since 1996 the Spotlight Awards have been given annually to five women who have distinguished themselves in the legal profession and who have helped light the way for other women. In 1998 the award was named to honor the late Mona Salyer Lambird, the first woman OBA president and one of the award's first recipients. The award is sponsored by the OBA Women in Law Committee. Each year all previous winners nominate and select the current year's recipients. A plaque bearing the names of all recipients hangs at the Oklahoma Bar Center in Oklahoma City. The 2007 award winners are:



RENEE DEMOSS is a shareholder and has practiced law at GableGotwals in Tulsa since 1984. Her practice is primarily in civil litigation, insurance, class action administration and professional liability. She has been an extremely active member of the Tulsa County Bar

Association for 23 years having served as president, treasurer and vice president. She has chaired committees including CLE, membership and lawyer referral. She was the 1995 chair of Law Day Committee for which TCBA won an ABA Law Day Award. She was the recipient of TCBA President's Award in 1993, 1999 and 2004. Ms. DeMoss currently serves as Tulsa County Bar Foundation president and was the TCBF President's Award recipient in 2004, 2005 and 2006. She has served on numerous OBA committees and is the current Oklahoma Bar Foundation president-elect. In 1994 she was named the GableGotwals Volunteer of the Year.

DONITA BOURNS DOUGLAS is director of OBA Educational Programs and has planned hundreds of CLE programs. Since becoming director, OBA/CLE has expanded to include online registration, Webcasts and online archived video/audio programming. She has made significant contributions to the OBA Women in Law Committee and is active in the Association of Continuing Legal Education (ACLEA). Her material, "Creating the Gold Standard for Speaker Presentations," was included in "The Best of ACLEA." She is currently co-chair of the ACLEA special interest group that includes all state bar associations and Canadian provincial bar associations. She received the OBA President's Award in 2003 and is a Fellow of the OBA/Young Lawyers Division. She served on the OBA committee that drafted the Supreme Court settlement conference procedure that is still in place today. She is an emeritus member of the Ruth Bader Ginsburg Inn of Court.



MELANIE J. JESTER is a law clerk to U.S. Magistrate Judge Valerie Couch of the Western District of Oklahoma. She previously worked at the law firm of Hartzog Conger & Cason in Oklahoma City where she had a broad litigation practice with concentration in the areas of business litigation, insurance defense and employment law. Ms. Jester has been an advocate for work life balance in the legal profession, and chairs the Oklahoma Bar Association's Work Life Balance Committee. She has also served on the OBA's Access to Justice, Law School and Women in Law Committees. She has been an active member of the Oklahoma County Bar Association, where she is a former member of the Board of Directors and currently serves on various committees. She is a master of the William J. Holloway Jr. American Inn of Court and has served on its executive board as program chair and treasurer.



LINDA G. SCOGGINS is a principal of the Oklahoma City law firm of Scoggins & Cross PLLC. She practices primarily in the areas of health law, employ-



ment law and litigation. She served four years as outside general counsel for the Oklahoma State Medical Association. She has been a speaker on employment and health law-related topics at numerous seminars including continuing education seminars sponsored by the Oklahoma Health Lawyers Association, Oklahoma Bar Association, Oklahoma Hospital Association, Oklahoma County Bar Association, Oklahoma City University School of Law and numerous medical and employment management groups. Ms. Scoggins has served as president of the Planned Parenthood Board of Directors.

PHYLLIS L. ZIMMERMAN is a long time Tulsa attorney whose practice emphasis is adoptions. Few people have had such a significant impact on Oklahoma families as Phyllis. She has helped at least 2,500 couples adopt children during her 45 years of practice. She received a B.S. degree in business administration from the University of Tulsa, where she was named Outstanding Business Woman. She is a Fellow of the American Academy of Adoption Attorneys. She has served as chair of the OBA Real Property Section. She is a member of the Cherokee Tribe Bar Association, Tulsa Title & Probate Lawyers and Oklahoma Association of Women Lawyers, for which she served as president. She has served as a judge of the Oklahoma Court of Appeals, Temporary Division. She was named to the 2007 American Bar Register of Pre-eminent Lawyers and received the Outstanding Community Leadership award from Oklahoma Adoption coalition in 2003.



Oklahoma City attorney Cathy Christensen (from left) and Tulsa attorneys Faith Orłowski and Elizabeth Joyner chaired the Women in Law Conference held at the Skirvin Hotel in Oklahoma City on Sept. 27.

A Friend in Need

By Dr. Wenona R. Barnes

Intense distress after a sudden crisis is normal and does not prohibit people from ultimately getting some benefit from the experience. Recovering and growing doesn't mean suppressing these responses but instead gradually incorporating them into a new perspective on life. Not everyone is going to find a good side to a crisis, but you can help foster this process in a friend or family member:

- Know that full-blown post-traumatic stress disorder (PTSD) is relatively rare. Even among those who were involved or injured in the World Trade Center on 9/11, only about one-quarter later suffered from PTSD.
- Don't force people to talk if they don't want to. It's natural to process a traumatic experience in short stints; in between, they may seek out friends and family in order to escape thinking about it.
- Support people in their efforts to cope with strong feelings, and don't be surprised if they say some strange things. "You have to meet people in territory in which they are exploring a new way of understanding life," explains Rick Tedeschi, (grief expert for Psychology Today).

- Don't urge your friend to move on — instead, help him/her tolerate their emotions. Distress can be a catalyst for change, and processing pain may be essential to deriving meaning from a life-shattering experience. Don't shut it down. Help them manage it so they can think straight without going numb.



- Understand that although there are many stages of grief (denial, anger, bargaining, depression and acceptance), there is no certain order or time frame, and

many of us repeat certain steps numerous times.

- Give your friend or relative a lot of time to recover, and help him or her maintain hope that things will eventually get better.
- Encourage your friend or relative to seek help if he or she is struggling. There are many community resources available.

Don't forget that OBA has set up a program with LifeFocus Counseling that offers free crisis counseling to OBA members...call (405) 840-5252 or toll free (866) 726-5252 anytime to find out more about this member service. We're here to help when you need it. We are here to help a friend in need.

Dr. Barnes is a psychologist with LifeFocus, a service provider working with the Lawyers Helping Lawyers Committee providing initial contact and counseling.

Oklahoma Bar Association

Financial Institutions and Commercial Law Section

Writing Competition

The Financial Institutions and Commercial Law Section is pleased to announce an award to be presented for the best published or publishable quality case note or comment written by a law student, or such a note or comment, or article or other published or publishable quality piece written by a lawyer admitted to practice for 3 years or less, on a topic dealing with commercial, consumer, or financial institutions law. The award includes a cash payment of \$1500, a Certificate of Recognition from the Section, and an all-expense paid presentation at a luncheon sponsored by the Section at the annual Commercial Law Update program in Oklahoma City in December. In addition, publication of the winning piece will be sought by the Section.

Entries for the award must be published or written during the period the period November 1, 2006 to November 1, 2007 and submitted before November 1, 2007. Unpublished entries should be typed double-spaced, in law review format.

The members of the Financial Institutions and Commercial Law Section include attorneys who have made significant contributions to commercial, consumer, and financial institutions law over an extended period of time. Its members include academics, present and former and state regulatory personnel, private practitioners, counsel for financial institutions and other service providers, and representatives of consumer protection organizations. Membership is open to all members of the Oklahoma Bar Association and membership in the Section is open to all interested members of the bar.

Four copies of your entry should be submitted to:

Fred H. Miller
George Lynn Cross Research Professor Emeritus
University of Oklahoma College of Law
300 Timberdell Road
Norman, Oklahoma 73019

New Attorneys Take Oath

Board of Bar Examiners Chairperson Deborah B. Barnes of Tulsa announces that 296 applicants who took the Oklahoma Bar Examination on July 24-25 were admitted to the Oklahoma Bar Association on Friday, Sept. 27. Chief Justice James R. Winchester of the Oklahoma Supreme Court administered the "Oath of Attorney" to the candidates at a swearing-in ceremony at the State Capitol. A total of 350 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Douglas W. Sanders vice-chairperson, Poteau; Peggy B. Cunningham, Yukon; Tom A. Frailey, Chickasha; Frank H. Jaques, Ada; W. Scott Mason III, Cordell; Sally Mock, Oklahoma City; Donna West Smith, Miami; and J. Ron Wright, Muskogee

New admittees are:

Ellen Adele Adams	Marcus James Bivines	Amy Rae Casbeer
Ranada Danelle Adams	Joshua James Blair	Jennifer Kristin Christian
Sariah Maria Adams	Jake Randal Boazman	David Anthony Cincotta
Ruth Josephine Addison	Brian Joseph Boerner	Jacquelyn Victoria Clark
Jennifer Lynn Albert Morgan	Travis Luigi Boghetich	Travis Ray Colt
Matthew Jeffrey Allen	Jolie Airington Boke	Christopher Troy Combs
Amanda Leigh Alley	Blaine Reagan Boyd	Nathan David Corbett
Cesar Adalberto Armenta	Lacy Nicole Boyles	Daniel Gill Couch
Aaron Maurice Arnall	Heidi Slinkard Brasher	Ryan Vonn Coventon
Andrew Clemens Ash	John Everett Brasher	John Thomas Coyne
Leah Marie Avey	Raegan Micah Brummal	Jeffrey Howard Crites
Penny Nicole Aziere	Jeremiah Louis Buettner	Josiah Martin Daniel, IV
Marva Alicea Banks	Cristi Lynn Bullard	Christopher Ross Darneal
Lauren Elizabeth Barghols	Shanna Selsor Burgin	Derrick Dale Davies
Benjamin Joseph Bax	Kathryn Suzanne Burnett	Andrew David Demorotski
Matthew Lamont Beery	Brandon James Burris	William Gene Denison
Kristina Lee Bell	Mark Joseph Cagle	Murone Juan Denman, Jr.
Inslee Theodore Bennett	Ernest John Calderon	Davis Franklin Dennis
Kassandra M. Bentley	Emily Elizabeth Campbell	Gypsy Sean Denton
Michael Amir Betts	Robert Kerr Campbell	Ryan Cameron Dexter
Robert Lamar Betts	Christopher Zane Cantrell	Wagner Roberto Dias da Silva
Joshua Sebastian Bex	Darlene Faye Carbitcher	Sheri Lynn Eastham
Shannon Elizabeth Bickham	Virginia Bass Carl	Alicia Jeanette Edwards

Joshua Lay Edwards
Beverly Lynn Elliott
Jennifer Danielle Ellis
Matney Michael Ellis
Terri Janelle Engles
Eric Matthew Epplin
Ceaser Aurelio Espinoza
Phillip Ryan Evans
Michael Allen Fagan
Timothy Blake Farris
Jennifer Jayne Fato
Steven Michael Feisal
Kyle Scott Felty
Kelly File
Jeri Rene' Fleming
Parker Huntington Foster
Eric Howard Foy
Alberto Franco
Candice Joan Freeman
Ashley Paige Fulk
Kali Diana Funderburk
Clayton Tyler Gaddis
Jenifer Ann Gani
Lisa Dianne Garcia
Melissa Renee' Gardner
David James Garrett
Stephanie Brooke Gatlin
Teresa Diane Gerber
Gregory William Gibson
Ryan Earl Gillett
Leo Paul Goeringer
Matthew Scott Gore
Jon Kacey Goss
Jonathan Adrian Graber
Harvey Charles Grauberger
Brett Edward Gray
Kristina Louise Gray
Robert Warden Gray
Justin Gebhart Greenfield

Sarah Elizabeth Groenjes
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Wade Daniel Gungoll
Jennifer Gail Hardwicke
Rebecca Ann Hart
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Scott Blake Hawkins
Melissa Ann Herr
Matthew Brice Hickey
Wendy Poole Higgins
Dana Ward Hobson
Clinton Lee Hodges
Craig Michael Hoehns
Rachel Canuso Holt
Anna Kathaleen Honea
Joanne Bryant Horn
Sharon Shiu-Lan Hsieh
Amber Dawn
Huffman-Sanderson
Kenneth James Hughes
John Cordell Hull
Hollye Anne Hunt
Jennifer Motwani Hurley
Jay Derek Husbands
Thomas Jennings Hutchison
Shevon Greene Ibale
Kristopher Dale Jarvis
Ditty Susan John
Crystal Ann Johnson
Jeffrey Scott Johnson
Jennifer Lynn Johnson
Richard Alan Johnson
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Andrew Nelson Keck
Ryan Alexander Keith
Kelli Dian Kelso
Erin Elizabeth Kennedy
Thomas Eldon Kennedy
Byron Eric Kentor
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Rochelle Leigh Klein
Carrie DeShann Kopp
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Raymond Lowell Lahann
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Cynthia Gail Mirkes
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Brandelyn Rachelle Murphy
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William Chris Nedbalek
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Bradley Joseph Noland
Michael Wayne Noland
Deirdre Michelle O'Donnell
Amanda Jo O'Quinn
Robert George Paczkowski
Heather Catherine Panick
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Kristen Jeanne Pauls
Nicholas Sean Paynter
Eric Lowell Pendergrass
Carol Anne Pettit
Dustin Scott Phillips
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Elizabeth Robertson Prykryl
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John Michael Ratliff
Joshua Loy Reid
Kristen Michelle Reid
Daniel Theodore Reineke, Jr.
Erin Alana Renegar
Colin Reed Richardson
Kendra Marie Robben
Natalie Marie Roberts
Cara Nicole Rodriguez
Ryan Covey Roper
Paul Edward Rossler
Jacob Leon Rowe
Laura Ann Rudnicki
Brandon Bassett Rule
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Katie Ann Sattre
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Andrew Russell Schroeder
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Christopher Noah Sears
Emily Jay Seikel
Crystal Dawn Shidler
David Anson Shipley
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J. Terrell Siegfried
Tara Elizabeth Sinclair
Jan Edwards Singelmann
Benjamin Paul Sisney
Marty Ray Skrapka
Brienne Leigh Slider
Kimberly Renae Slinkard
Debbie Lee Smith
Jordan Ashley Smith
Lori Beth Smith
Michelle Kay Smith
Randy Carl Smith
Sara Catherine Smith
Sarah Lynne Soderstrom-Bridge
Sarah Lynn Soles
Matthew L. Solomon
Carol E. Sorensen
Sheila Ann Southard
Meredith Blake Stanton
Donald Dale Stemple
Joshua Clayton Stockton
Michael Charles Stone
Myron Kyle Stout
Stacey Delane Sturgess
Kendall Anne Sykes

Tahereh Tabatabaie
Rebekah Chisholm Taylor
Andrea Gayle Teter
Ellen Marie Thomas
Scott Kevin Thomas
Matthew Brian Thompson
Amanda Leigh Thrash
Michael Vinh To
Lauren Adrienne Toppins
Matthew Lee Toppins
Michael Thomas Torrone, Jr.
Charles Russell Tracy
Jeffrey Bryant Tracy
Jeffery Darnell Trevillion
Austin Lee Turner
Adrienne Renae Vasquez
Hilary Louise Velandia
John Derrick Wadley
Kaci Jo Walker
Jill J'Ann Walker-Abdoveis
Jana Kay Wallace
Margie Adeline Weaver
Vialo Weis, Jr.
Linda Susan Welcher
Sarah Elizabeth White
Weston Harold White
Regina Lynn Wiesman
Autumn LaVerne Williams
Carrie Lynn Williams
Rebecca Lynn Williams
Sean Patrick Williams
Stanley Williams, II
Eugene Cameron Wink
Christina Marie Wolfram
George Jay Wright
Patrick Robert Wyrick
David Ernest Zelnick

The Board on Judicial Compensation will hold a meeting on Tuesday, October 30, 2007. The Board wants to solicit public input as to the appropriate salary for the following judicial positions:

1. Chief Justice of the Supreme Court;
2. Associate Justices of the Supreme Court;
3. Presiding Judge of the Court of Criminal Appeals;
4. Judges of the Court of Criminal Appeals;
5. Presiding Judge of the Court of Civil Appeals;
6. Judges of the Court of Civil Appeals
7. District court judges
8. Associate district court judges; and
9. Special district court judges

The Board will only consider written responses that are dated, signed by the person submitting them and received by 5:00 p.m., October 20, 2007. Responses should be submitted to the following address:

Judicial Compensation Board
c/o Administrative Office of the Courts
1915 North Stiles, Suite 305
Oklahoma City, OK 73105



Statement of Ownership Management and Circulation

(Required by 39 U.S.C. 3685)

1. Publication Title: The Oklahoma Bar Journal
2. Publication number: 277-340
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 Publisher: Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036
 Editor: Melissa DeLacerda, 301 S. Duck, Stillwater, OK 74076
 Managing Editor: John Morris Williams, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036
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 Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036
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12. Tax Status: The purpose, function and nonprofit status of this organization and the exempt status for federal income tax purposes has not changed during preceding 12 months.

13. Publication Title: The Oklahoma Bar Journal

14. Issue Date for Circulation Data Below: September 29, 2007

15. Extent and nature of circulation

A. Total No. Copies (net press run) (average no. copies each issue during preceding 12 months): 15,579(actual no. copies of single issue published nearest to filing date): 15,700

B. Paid and/or Requested Circulation

1. Paid/Requested Outside-County Mail Subscriptions (average no. copies each issue during preceding 12 months): 15,024(actual no. copies of single issue published nearest to filing date): 15,296

2. Paid In-County Subscriptions (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

3. Sales Through Dealers and Carriers, Street Vendors, Counter Sales and Other Non-USPS Paid Distribution (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

4. Other Classes Mailed Through the USPS (average no. copies each issue during preceding 12 months): 19 (actual no. copies of single issue published nearest to filing date): 0

C. Total Paid and/or Requested Circulation (average no. copies each issue during preceding 12 months): 15,043 (actual no. copies of single issue published nearest to filing date): 15,296

D. Free or Nominal Rate Distribution by Mail

1. Outside-County (average no. copies each issue during preceding 12 months): 172 (actual no. copies of single issue published nearest to filing date): 169
2. In-County (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
3. Other Classes Mailed Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
4. Free Distribution Outside the Mail (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

E. Total Free Distribution (average no. copies each issue during preceding 12 months): 172 (actual no. copies of single issue published nearest to filing date): 169

F. Total Distribution (average no. copies each issue during preceding 12 months): 15,215 (actual no. copies of single issue published nearest to filing date): 15,465

G. Copies Not Distributed (average no. copies each issue during preceding 12 months): 364 (actual no. copies of single issue published nearest to filing date): 235

H. Total (average no. copies each issue during preceding 12 months): 15,579 (actual no. copies of single issue published nearest to filing date): 15,700

I. Percent Paid and/or Requested Circulation (average no. copies each issue during preceding 12 months): 98.86 (actual no. copies of single issue published nearest to filing date): 98.90

I certify that the statements made by me above are correct and complete.

John Morris Williams
Editor-in-Chief

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Change is in the Air

(But there is time to catch up)

By John Morris Williams

Last week was the first official day of fall. Not to be ruled by the almanac, I declared the last week of August as the beginning of fall. I was early, but I had a good reason.

It was not because the leaves were turning or anything like that. It was the beginning of a string of great events. During the last part of August we held a leadership conference. The conference was titled, "Pass the Leadership, Please" with an emphasis on emerging leaders in our association. I have to tell you the future looks bright. I knew many of the participants and many I met for the first time. The attendees were an impressive group that I am certain will occupy leadership roles in the OBA for decades to come. Many of them already do so.

The group consisted of 54 of the best and brightest emerging leaders in our state. Yes, I said in our state. They are not just talented lawyers, they are distinguished leaders who will be sought to sit on boards and will occupy leadership roles in all three branches of government. We should all be proud that the torch is being passed to such an able and capable group of emerging leaders. I am exceptionally proud that the OBA recognized them and did its part to

promote and encourage them. No mention of the 2007 leadership conference would be complete without commenting on the opening session with Mike Turpen. As usual, he was incredible. I want to thank him publicly for his appearance and to Chesapeake Energy and Pre-Paid Legal Services for helping make copies of his book available to all the participants.

Following "Turpen Time" we packed in an afternoon and the following morning with programs featuring many great speakers including Judge Jerome Holmes of the 10th Circuit Court of Appeals, Judge David Lewis of the Court of Criminal Appeals and Lt. Gov. Jari Askins. To them and all the other speakers and presenters, we are grateful for your time and leadership. Hats off to President Stephen Beam and Conference Chair Linda Thomas for some really great programming.

The rest of the fall is looking good. The Women in Law Conference, Annual Meeting and spectacular CLE round out the great events that make each fall a very special time in our association. Between these events, football season and cooler days it just doesn't get much better. Lest I forget Halloween candy and Thanksgiving.

On a more serious note, fall also brings us Veterans Day. To those OBA members who have served in our armed forces let us be grateful and remember their duty and sacrifice. To our members who are in uniform or those who have sons and daughters serving our nation, let us be mindful of their service. For they, too, are among our best who choose to serve.

I know I started fall a bit early. I could not help myself. There is just too much good stuff going on not to get an early start. Have you started? Have you signed up for the Annual Meeting? Have you picked out a couple of great CLE courses and enrolled? With our online registration, it will take you only seconds to get signed up. With the clocks being turned back an hour with the end of daylight savings time, you will even gain an hour to do it! You may have already missed a month of fall, get busy and catch up by taking part in the great fall line up at the OBA.



To contact Executive Director Williams, e-mail him at johnnw@okbar.org

Voice-Activated Technology for Lawyers

By Jim Calloway, Director, OBA Management Assistance Program

This month we cover what some might think to be an unusual topic - the role of your voice combining with technology in the 21st century law office.

This month's column is brief but includes lots of reference material.

Lately we've seen more voice-activated technology enter mainstream usage. I decided to cover this topic for two reasons: first was an experience I had with my home Internet service provider and second, because of a free voice-activated technology service that I've been using and enjoying lately called Jott. I think many of you may want to try Jott.

I had a positive experience using voice-activated technology with my cable and Internet provider. I lost Internet service, but not cable or phone. So a call in to the company was warranted. After navigating a few menus, a voice pleasantly informed me that all tech support people were busy and the wait would be a while. It asked if I would like to try to fix the problem with their voice command system. "Yes," I replied, and spent a few minutes responding yes and no to the computer's queries. At one point the

computer advised me that it could not "see" my modem on the network and asked me to reset it. Soon the system was fixed.

I did note that the consumer experience was a bit more positive giving verbal replies than punching buttons for menu choices. I'm not sure I see law offices having such complex choices that they could ever justify putting in voice-driven menus for callers to the office. But you never know what options future technology will bring.

“Lately we've seen more voice-activated technology enter mainstream usage.”

And so, let me move on to Jott, an interesting bit of voice-activated technology that has recently been getting a fair amount of notice and many positive reviews.

This service is free, at least for the present time in its "public beta" edition.

You can set up the Jott service by going to jott.com. For fast and easy set up, you want to make sure that you have access to both your e-mail and your mobile phone when setting it up, as both will require verification.

Simply put, Jott is a service that will let you dictate messages of up to 30 seconds of speech, which it then transcribes via speech recognition software and sends out as e-mails. (There are other ways to use the service such as sending text messages, but let's stick with e-mails for simplicity's sake.)

As we know, speech recognition software is not perfect, so when Jott generates an e-mail, it also includes a link that will play the original voice dictation in case there is an error.

Most of us are using Jott to make brief memos or to-do lists for ourselves. After all, it seems like your mobile phone is always with you and by combining caller ID with speech recognition software, doing a reminder to yourself is almost effortless.

One lawyer excitedly called me about his use of Jott to dictate brief memos or letters to clients after hearings either

in the courthouse hallway or on the way home. (The non-driving method is obviously safer.) By dictating these brief letters at the courthouse and using Jott to e-mail them to his assistant, the letters can be prepared and ready for his signature when he returns from court.

I find that dictating appointment and calendar entries through Jott is actually quicker than entering them via my Treo's keypad. Then when I get back to the office and open the e-mail, I can copy and paste the appropriate calendar entries into Outlook and avoid ever typing them at all.

When you think about it, there are a number of possibilities for this service. Do you have trouble keeping track of all your credit card charges and ATM withdrawals? Why not set up a dedicated e-mail account and tell Jott that e-mail is called The Bank? Then every time you make a charge on a credit card or make a withdrawal from an ATM, you can dictate the details into Jott. When it comes time to balance your checkbook, you just log in to the e-mail account to verify all of the entries and then delete the e-mails.

I do note that this service really only seems fantastic if you use voice command dialing with your mobile phone or can set up a speed dial entry on your mobile phone for Jott. Anyway, give Jott a try. But don't blame me if you get hooked and it then becomes a pay service.

Dictation has long been a staple of information delivery within the law office. This is one area where the technology has completely shifted. While there's nothing wrong with buy-

“ Dictation has long been a staple of information delivery within the law office. ”



ing another \$50 handheld cassette unit, firms that utilize the dictation/transcription production model need to go ahead and make the leap to digital dictation systems sooner rather than later. It is certainly an investment, but there will be a resulting productivity increase in most offices.

In the April 2007 *Oklahoma Bar Journal*, I wrote about the virtual replacement of cassette dictation equipment with digital dictation equipment that is occurring in law offices across the country. See “The Rise and Fall of the Dictation Tape,” *Oklahoma Bar Journal* April 14, 2007 (Vol. 78 1021).

If you didn't catch this article when it was originally published, I strongly suggest that you take the time to read it if your office is using cassette-based dictation.

Then there's also the argument abandoning the dictation/transcription production model entirely in favor of the “dictate and correct” model. Speech recognition software is one of the technologies that failed to deliver on its promise for years and years.

But, as I noted in the summer of 2006, this product is finally ready for prime time. Large parts of this article were voice dictated and although the result was not perfect, dictating a rough draft and then manually doing corrections is now a fairly fast method of production. In some part, this depends on your typing speed. If you can type 100 words per minute, then speech recognition software is certainly not for you.

The tool I am using is DragonDictate NaturallySpeaking Preferred Edition 9 from nuance.com. Since the software package was released

over a year ago, I have a feeling that we will see version 10 of the software released before the end of this year. I have no inside information about this. It is just a hunch.

For more information on speech recognition software, including other products, see my article, "Computer, Can You Hear Me Now? One Lawyer's Surprisingly Positive Experience with Speech Recognition Software" in *Oklahoma Bar Journal* Sept. 2, 2006 (Vol. 77 2485).

Here at the Oklahoma Bar Center we upgraded to Voice over Internet Protocol (VoIP) phones. This is not the same thing as VoIP systems such as Skype that some are using to make free or very inexpensive long distance phone calls.

Here we are talking about a VoIP phone. The prior phone system was old and had been creating some problems. But the primary motivation for the change at this time was the move of half of the OBA staff to the modular offices. With a traditional phone system there would have been an enormous amount of rewiring to move all of the phones to a new building. With this VoIP voice system, one just does all of the

network computer wiring and plugs the VoIP phone into the computer network.

In fact, you can carry the phone to a different office, plug the phone into the computer network outlet and the phone will still be "your" phone.

There are numerous benefits to this system. But the one that we noticed immediately is an application that delivers us our voicemail as e-mail attachments. It is quicker to retrieve a voicemail as an e-mail attachment. But even more important is the fact that you can easily save a particular voicemail if you need to because we all understand how to deal with saving e-mail attachments.

Larger law firms will be determining when to deploy this state-of-the-art technology change over the next few years.

The old saying is that "talk is cheap." As you can see from this brief overview, when you apply technology, sometimes talk is cheap, sometimes it is free and sometimes it is expensive, but well worth the price. Of course we lawyers have never believed that talk is cheap anyway. Sometimes spoken words can be very valuable.

ANNUAL OU LAW ALUMNI LUNCHEON

SAVE THE DATE!

**OBA Annual Meeting
Oklahoma City, Oklahoma
Petroleum Club**

**Wednesday, November 7, 2007
Reception at 11:15 (cash bar)
Luncheon at Noon, \$30.00**

Please send luncheon payment to OBA.

**The University of Oklahoma
COLLEGE OF LAW**

**Questions: Karen Housley
300 Timberdell • Norman, OK 73019-5081
(405) 325-0501 • khousley@ou.edu**

• Registration for OBA meeting is not required for luncheon •

SAVE THE DATE!

Changes at a Glance (Part 2)

By Gina Hendryx, OBA Ethics Counsel

In the August edition of the *Oklahoma Bar Journal*, several of the modifications to the Oklahoma Rules of Professional Conduct were highlighted. Beginning Jan. 1, 2008, amendments to the Oklahoma Rules of Professional Conduct as approved by the Oklahoma Supreme Court will become effective. These changes were prompted by extensive updates to the American Bar Association's Model Rules of Professional Conduct. The current Oklahoma rules are based substantially on the ABA Model Rules and the adopted amendments reflect these updates as well as current Oklahoma modifications.

The following is a summary of additional rule changes that may impact your practice of law.

Rule 1.15 Safekeeping Property

Rule 1.15 now allows for depositing a lawyer's own funds into the client trust account for paying bank service charges. Furthermore, the amended rule specifies that *ALL* advance payments for fees or expenses will be placed into the trust account and may only be withdrawn as fees are earned or costs incurred. Lawyers will also be instructed to provide mandatory overdraft notification authorization to their financial institutions. The

financial institution will be instructed to notify the General Counsel of the Oklahoma Bar Association if any properly payable instrument is presented against a client trust account containing insufficient funds. No trust account shall be maintained in a financial institution which does not agree to make such reports.

Rule 1.17 Sale of a Law Practice

A lawyer may sell an "area of practice" if the seller ceases to engage in the private practice of law, or in the area of practice that has been sold in the geographic area of Oklahoma in which the practice has been conducted. The sale may be to one or more lawyers or law firms. The client has the right to take possession of the file and retain other counsel.

Rule 1.18 Duties To Prospective Clients

Rule 1.18 is entirely new and is informative on grappling with the potential client that seeks out the lawyer for advice but doesn't hire the lawyer for representation. The conflict then arises when the adverse party of the matter seeks to employ the lawyer. This rule states that such a person seeking advice is a "prospective client." The lawyer cannot use or reveal information learned

in the consultation and shall not represent a client with interests materially adverse to those of the prospective client in the same or a substantially related matter. Representation may be permissible if both affected persons give informed consent, confirmed in writing.

Rule 2.4 Lawyer Serving As Third Party Neutral

Rule 2.4 is also a new rule for Oklahoma. It defines "third party neutral" and places responsibility for disclosure to unrepresented parties upon the lawyer serving as a mediator or arbitrator.

Rule 3.3 Candor To The Tribunal

Rule 3.3 (a)(1) will require a lawyer to correct a false statement of material fact or law if the lawyer knowingly makes the statement. Section (b) will require a lawyer to take reasonable remedial measures, including disclosure to the tribunal, if the lawyer knows that a person has engaged in criminal or fraudulent conduct relating to the proceeding.

Rule 4.4 Respect For The Rights Of Third Persons

Change will only require that the recipient of an inadvertently sent document *promptly notify the sender*. Whether the recipient should

return the documents is beyond the scope of the rules. This change will also apply to electronic transmissions such as e-mail.

Rule 5.4 Professional Independence Of A Lawyer

Lawyer may purchase the practice of a deceased, disabled or disappeared lawyer. Pursuant to the provisions of Rule 1.7, the lawyer may pay to the estate or other representative of that lawyer the agreed-upon purchase price.

Rule 5.5 Unauthorized Practice of Law; Multi Jurisdictional Practice Of Law

There will be significant changes to this rule effective the first of the year. The new language details when a lawyer, not licensed in Oklahoma, may provide legal services in this state. These include representations taken in association with an Oklahoma attorney; matters in which the out of state attorney is admitted *pro hac vice*; matters related to an arbitration or mediation if these arise out of the lawyer's practice in the jurisdiction in which the lawyer is licensed; services provided to the lawyer's employer in connection with the employer's business so long as the lawyer does not provide legal services to third parties and does not require admission *pro hac vice*; or are authorized by federal law.

Summaries of the rule changes as they affect advertising will be summarized in the December issue of the *Oklahoma Bar Journal*. The full text of these and all the amendments can be found at www.okbar.org/ethics/ORPCO7.pdf

Oklahoma Bar Journal Editorial Calendar

2007

- November
Diversion Programs
Editor: Judge Lori Walkley
lori.walkley@oscn.net
Deadline: Aug. 1, 2007
- December
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2007

If you would like to write an article on these topics, contact the editor.

2008

- January
Meet Your OBA
Editor: Carol Manning
- February
Real Estate Law
Editor: John Munkacsy
johnmunk@sbcglobal.net
Deadline: Oct. 1, 2007
- March
Pretrial Litigation
Editor: Julia Rieman
rieman@enidlaw.com
Deadline: Jan. 1, 2008
- April
Law Day
Editor: Carol Manning
- May
Work/Life Balance
Editor: Jim Stuart
jtstuart@swbell.net
Deadline: Jan. 1, 2008
- August
Insurance Law
Editor: Judge Lori Walkley
lori.walkley@oscn.net
Deadline: May 1, 2008
- September
Bar Convention
Editor: Carol Manning
- October
Guardianship
Editor: Stephen Barnes
barneslaw@alltel.net
Deadline: May 1, 2008
- November
Technology/Practice Management
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2008
- December
Ethics & Professional Responsibility
Editor: Martha Rupp Carter
mcarter@tulsa-health.org
Deadline: Aug. 1, 2008

September Meeting Summary

The Oklahoma Bar Association Board of Governors met in Eufaula on Friday, Sept. 21, 2007.

REPORT OF THE PRESIDENT

President Beam reported he attended the Boiling Springs Institute in Woodward, OBA Leadership Conference, Awards Committee meeting and Annual Meeting Task Force meeting. He spoke to Annual Meeting speaker Ben Stein to discuss the topic of Mr. Stein's keynote presentation. He met with Executive Director Williams, worked on bar convention details and continued planning for the October board meeting in Custer County.

REPORT OF THE VICE PRESIDENT

Vice President Dawson reported he attended the Bar Center Facilities Committee meeting, Leadership Conference and Canadian County Bar Association meeting. He chaired the Lawyer Advertising Task Force meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Conger reported he attended the OBF Grant Committee meeting, Leadership Conference and chaired the Bar Center Facilities Committee meeting.

REPORT OF THE PAST PRESIDENT

Past President Grimm reported he attended the

OBA Bar Center Facilities Committee meeting and reviewed the Lingo Construction Services agreement.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended a budget meeting with staff, budget meeting with President-Elect Conger, monthly staff celebration, Bar Center Facilities Committee meeting, Annual Meeting Task Force meeting, Lawyers Helping Lawyers meeting and Budget Committee meeting. He also met with President Beam and made a CLE presentation at Boiling Springs Institute.

BOARD MEMBER REPORTS

Governor Bates reported she attended the Leadership Conference and joint Thursday evening social event, Leadership Conference luncheon, August board meeting, OBA State Legal Referral Service Task Force meeting, OBA Awards subcommittee meeting, OBA Awards Committee meeting and Cleveland County Bar Association meeting. **Governor Caudle** reported he attended the August Board of Governors meeting, Leadership Conference, Professionalism Committee meeting, Mentoring Task Force meeting and Comanche County Bar Asso-

ciation CLE luncheon. He participated in a phone conference meeting with Mentoring Task Force Chairman Jon Parsley and chaired the September State Legal Referral Service Task Force Committee meeting. **Governor Christensen** reported she attended the August Board of Governors meeting and social events, OBA Leadership Conference, OBA Bench and Bar Committee meeting and subcommittee meeting reviewing the ABA Proposed Model Code of Judicial Conduct, Bar Center Facilities Committee meeting and a Women in Law Committee annual conference planning meeting. She participated in an OBA Mentoring Task Force telephone conference with Chairman Jon Parsley. **Governor Dirickson** reported since her last report she attended the first day of the Leadership Conference, OBA Budget Committee meeting and two Custer County Bar Association meetings. **Governor Farris** reported he attended the Tulsa County Bar Association Annual Meeting and Awards Banquet, where he presented OBA awards to bar members celebrating significant membership anniversaries this year. He attended the August board meeting, OBA Leadership Conference and Tulsa County Bar Founda-

tion meeting. **Governor Hermanson** reported the Member Services Committee will be submitting a recommendation for a credit card affinity program for firms accepting credit cards from clients. He attended the OBA Leadership Conference and the related social events, August Board of Governors meeting, OBA Member Services Committee meeting, OBA State Legal Referral Service Task Force meeting and OBA Professionalism Committee meeting. **Governor Hogan** reported he attended the August board meeting, second day of the Leadership Conference and Pittsburg County Bar Association meeting. He also worked on scheduling CLE for the county bar's November meeting. **Governor Kenner** reported he attended the August board meeting, Leadership Conference, Seminole/Hughes counties bar luncheon, Mentoring Task Force meeting and State Legal Referral Service Task Force meeting. **Governor Reheard** reported she attended the Leadership Conference and evening dinner with participants, plus the Bench and Bar Committee meeting regarding the Model Code of Judicial Conduct. **Governor Souter** reported he attended the Leadership Conference, August board meeting, OBA Awards Committee meeting and Creek County Bar Association meeting. **Governor Stockwell** reported she attended the August board meeting, Leadership Conference, Cleveland County Bar Association luncheon, CCBA Executive Committee meeting and OBA Awards Committee meeting.

YOUNG LAWYERS DIVISION REPORT

Governor Camp reported he attended the OBA Leadership Conference in Oklahoma City, during which he made a presentation about the YLD. He attended the dinner at Crabtown with board members and conference attendees in addition to hosting the hospitality suite for conference attendees. He chaired the August YLD Board of Directors meeting and met with an ABA/YLD district representative regarding operation of the FEMA hotline.

SUPREME COURT LIAISON REPORT

Justice Taylor reported the Judicial Nominating Commission will soon consider six applicants for the Supreme Court District 1 vacancy created by the retirement of Justice Robert Lavender. From the six applicants, three will be recommended by the commission and interviewed by Gov. Henry for his selection. He said the court has returned to its regular conference schedule. Justice Taylor said a new procedure will be used for the fall swearing-in ceremony of new lawyers. The location has been changed to the House of Representatives chambers in the State Capitol Building. Because of space limitations of that facility, the group is being divided up by law school and the oath of attorney will be issued in three separate sessions. He also reported the Supreme Court will host a summit of judges from across the state to discuss merging of the statewide case management sys-

tem, including electronic filing.

LAW STUDENT DIVISION REPORT

LSD Chair Pappy reported she attended the Leadership Conference, created a member recruitment flier for the division, signed up new members and coordinated more than 20 law students to work on the eldercare law handbook with the YLD. She also has been in contact with the division Executive Board members at all three schools to coordinate their schedules for upcoming meetings.

BENCH AND BAR COMMITTEE REQUEST

Governor Christensen reported the Bar and Bar Committee is nearing completion of its work on the proposed Code of Judicial Conduct and asks permission to request feedback from members when the proposed code is finished. She said the committee is also working with the Oklahoma Judicial Conference and Administrative Office of the Courts. The board gave its permission for member comment to be solicited.

ABA RETIREMENT REPORT

Mike Moniz, ABA Retirement Funds assistant vice president of marketing, reviewed the history of the partnership with the OBA since 1995. He described the program and explained how it is unique. The board voted to renew the three-year agreement, which will be through September 2010.

BAR CENTER RENOVATIONS

As Bar Center Facilities Committee Chairperson, President-Elect Conger reported the board at this meeting is reviewing a standard construction contract without dollar amounts, which will be submitted with the amounts included for board review next month. Work at the bar center is still in the abatement phase, which is a separate contract. Construction has not yet started.

COMMUNICATIONS TASK FORCE RECOM- MENDATIONS

President Beam reported he has divided the task force's recommendations into three parts, with consideration of the first part at this meeting. Part two will be considered at the November meeting and part three at the December meeting. Task Force Chair Melissa DeLacerda reviewed the thoughts of task force members who recommend that bar members be given the option to not receive Oklahoma Bar Journal court issues by mail. The board approved the recommendation with the amendment that bar members will be given the choice of receiving court issues by mail or receiving an e-mail with a link to the court issue on the Web. The board directed staff to add that option to the annual dues statement and to promote

the new option in the coming months.

Ms. DeLacerda reported the task force recommends that publication of the annual reference guide or handbook issue of the Oklahoma Bar Journal cease. She reviewed survey results that indicate bar member utilization is minimal. The board voted to cease publishing the reference guide.

Ms. DeLacerda reported the task force recommends changing the name of the Public Information Department to the Communications Department, which was suggested in an ABA report to more accurately reflect the department's responsibilities. The board approved the name change.

STAFF OUT-OF-STATE TRAVEL REQUEST

The board approved reimbursement expenses for Management Assistance Program Director Jim Calloway to travel to Philadelphia for the ABA GPSolo Division National Solo and Small Firm Conference Oct. 5 and 6, 2007.

CONSENT ITEMS

The board approved the Awards Committee's recommendations for recipients of OBA awards at the upcoming Annual Meeting and to appoint to the Oklahoma Indian Legal Services (OILS) Board of Directors O. Joseph Williams, Norman, to complete the unexpired term of

Ryland Rivas and to the next three-year term that expires on Dec. 31, 2010.

HB 1804 RE: IMMIGRATION

Executive Director Williams reported he is concerned that the HB 1804 legislation that becomes effective on Nov. 1, 2007, with sections effective July 1, 2008, may have some unintended consequences that could affect OBA operation. A section of the bill addresses the use of ID cards, and it is his position OBA membership cards are not ID cards. He explained that the coming state legislation may impact vendor relationships. He noted that Oklahoma is the only state to have these requirements.

WOMEN IN LAW COMMITTEE

Governor Christensen reminded board members that the Women in Law Conference will take place Sept. 27 in Oklahoma City. She also reported the WIL Committee is a sponsor of the Annual Walk of Hope, an event that will take place Sept. 22 at the Oklahoma Bar Center to raise awareness about cancer of the female reproductive organs.

NEXT MEETING

The board will hold its next meeting in Weatherford on Friday, Oct. 17, 2007.

Introduction to Historic Preservation Law in Oklahoma

- DATES & LOCATIONS:** **Oklahoma City**
October 25, 2007
Oklahoma Bar Center
1901 N. Lincoln Blvd.
- CLE CREDIT:** This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 0 hour of ethics.
- TUITION:** \$150 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$175 for registrations with payment received within four full business days of the seminar date. Register online at www.okbar.org. Approval for Real Estate credit is pending.
- CANCELLATION POLICY:** Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.

Program:

Program Planner/Moderator

Melvena Heisch, Deputy State Historic Preservation Officer,
State Historic Preservation Office, Oklahoma City

8:30 a.m. Registration & Continental Breakfast

- | | |
|--|---|
| <p>9:00 Introduction to Historic Preservation
Introduces the terminology of historic preservation, the public agencies and private organizations that play key roles in historic preservation at the national, state, and local levels, and includes an overview of federal and state statutes related to historic preservation.
Melvena Heisch</p> | <p>10:50 Effective Enforcement of Local Historic Preservation Ordinances
What historic preservation ordinances do, how they promote community revitalization and the challenges of effective implementation of such ordinances
James K. Reap, National Alliance Preservation Commissions, Athens, GA</p> |
| <p>9:50 Break</p> | <p>11:40 Networking lunch (included in registration)</p> |
| <p>10:00 The National Historic Preservation Act: How it is Implemented in Oklahoma
Criteria, process, and meaning of listing or eligibility of the National Register of Historic Places and on Section 106 of the Act.
Melvena Heisch</p> | <p>12:10 p.m. Covenants, Easements, and Other Tools for Fostering Successful Preservation
Various legal mechanisms for insuring preservation of significant archeological and historical properties and related incentives
James K. Reap</p> |

1:00 Federal and State Tax Credits for Rehabilitation of Historic Buildings
Certified rehabilitation of certified historic structures, including eligibility criteria, rehabilitation standards, and the certification process
Catherine Montgomery, Historic Preservation Architect, State Historic Preservation Office, Oklahoma City

1:50 Break

2:00 Structuring the Financial Element of a Certified Rehabilitation
Internal Revenue Service and Oklahoma Tax Commission requirements that must be met to insure that owners/developers can maximize the use of these important historic preservation incentives
Joel Cohn, Principal, Reznick Group, P.C., Baltimore

2:50 Adjourn

Introduction to Historic Preservation Law in Oklahoma

☐ **Oklahoma City**
October 25, 2007

☐ **Materials only \$80**
Pub. #296

Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone () _____ E - Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____
Make Check payable to the Oklahoma Bar Association and mail entire page to: CLE REGISTRAR, P.O. Box 960063 Oklahoma City, OK 73196-0063
For ☐ Visa or ☐ Master Card Fax (405) 416-7092 Phone •(405) 416-7006
or Mail
Credit Card# _____ Exp.date _____
Authorized Signature _____

Register online at www.okbar.org/cle



Tool Time for Creditor's Counsel: Judicial Mortgage Foreclosures

DATES & LOCATIONS: **Tulsa**
October 12, 2007
Crowne Plaza Hotel
100 E. 2nd St.

Oklahoma City
October 19, 2007
Oklahoma Bar Center
1901 N. Lincoln Blvd.

CLE CREDIT: This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 1 hour of ethics. For course approval in other states, contact the CLE Registrar. Approval for Real Estate credit is pending.

TUITION: \$150 for early-bird registrations received with payment at least four full business days prior to the seminar date; \$175 for registrations received within four full business days of the seminar date. Register online at www.okbar.org/cle.

CANCELLATION POLICY: Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. No requests for refunds or cancellations will be accepted on or after the seminar date.

Program Planner/Moderator

Monica Wittrock, Vice President and Chief Operations Officer,
First American Title Insurance Company, Oklahoma City

Program:

8:30 a.m.	Registration and Continental Breakfast	1:00	The New Yankee Workshop: Current Ethics Issues in Foreclosure Practice (ethics)
9:00	Start with a Good Set of Blueprints: Building Blocks for a Solid Foreclosure Action Monica Wittrock		<u>Tulsa Program</u> Matt Hudspeth , Baer, Timberlake, Coulson & Cates, Tulsa
9:50	Break		<u>Oklahoma City Program</u> Steven A. Heath , Baer, Timberlake, Coulson & Cates, Tulsa
10:00	Start with a Good Set of Blueprints (continued) Monica Wittrock	1:50	Break
		2:00	Measure Twice - Cut Once: Working with Your Title Company C. Hayden Chapman , General Counsel, First American Title Insurance Company, Oklahoma City
10:50	Start with a Good Set of Blueprints (continued) Monica Wittrock	2:50	Adjourn
11:40	Networking lunch (included in registration)		
12:10 p.m.	Use the Right Tool for the Job: Special Issues Concerning Commercial Properties Robert N. Sheets , Phillips McFall McCaffrey McVay & Murrah, Oklahoma City		

Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone () _____ E - Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____

Make Check payable to the Oklahoma Bar Association and mail entire page to: CLE REGISTRAR, P.O. Box 960063 Oklahoma City, OK 73196-0063

For ☐ Visa or ☐ Master Card Fax (405) 416-7092, Phone •(405) 416-7006 or Mail

Credit Card# _____ Exp. date _____

Authorized Signature _____

Tool Time for Creditor's Counsel: Judicial Mortgage Foreclosures

☐ **Tulsa**
October 12, 2007
Crowne Plaza Hotel

☐ **Oklahoma City**
October 19, 2007
Oklahoma Bar Center

☐ **Materials only Pub. #294 \$80**

Register online at www.okbar.org/cle

What would you do...

if you had one day to decide how to give away \$760,000?

Sounds simple, but it's not. First the money only goes for qualifying charitable purposes that meet the stated law-related purposes and mission of the Oklahoma Bar Foundation. You are in the middle of final preparations for trial and a stack of requests more than 12 inches high arrives at your office. As you go through them, you find that requests total well over a million dollars, and you are charged with determining which programs are most worthwhile — the problem is they all sound good!

Giving away money thoughtfully is not an easy task. Your Oklahoma Bar Foundation Board of Trustees is comprised of a group of attorneys from all across the state that bring an incredible body of talent, experience and knowledge to the table. From within that group, the Grants and Awards Committee is charged with reviewing grant requests and being good stewards of the money at every step of the award process. The committee spends an entire day conducting applicant interviews to help with final determinations. This year 18 programs have been recommended to receive OBF grant awards totaling \$763,000, with an additional \$58,158 being awarded for law student scholarships, bringing the total awards to \$821,158.

The OBF has already exceeded the \$7 million award level at a total of \$7,471,074 to date. The \$7.5 million level will likely be topped by the close of the year. The OBF held a grand gala event during 2002 to celebrate crossing the \$5 million level of grant awards that covered a period of more than 50 years. Just five short years later that amount has grown to more than \$7 million dollars thanks to the generosity of attorneys from across Oklahoma and participation in the IOLTA pro-

gram. While it is almost impossible to estimate the number of people who have benefited from programs supported by the OBF, it is fair to say that OBF supporters and contributors have helped make an important difference in the lives of many. Programs helped this year are:

Boys & Girls Clubs of Green Country Inc., Mayes County Youth Court	\$6,000
<i>Ongoing program maintenance</i>	
Center for Children & Families Inc. of Cleveland County	5,000
<i>Supervised court-ordered visitation and family exchange services</i>	
Crossroads Youth & Family Services Inc.	3,500
<i>Cleveland County Juvenile Intervention Public Legal Information Pamphlet</i>	
Domestic Violence Intervention Services Inc., Call Rape	10,000
<i>Civil legal services</i>	
Family Shelter of Southern Oklahoma	10,000
<i>Civil legal services for victims of domestic violence</i>	

cont'd from page 2561

**Legal Aid Services
of Oklahoma Inc.**

\$400,000

*Entry-level salary funding
and program expansion*

**OBA Law-Related
Education PACE
Teacher Institute**

25,000

*Ongoing program maintenance
for presentation of the summer
teachers' workshop*

**OBA/YLD Oklahoma High
School Mock Trial Program**

44,225

*Program presentation and
addition of an advanced
student/teacher clinic*

**Oklahoma CASA
Association Inc.**

15,000

Statewide Training Conference

**Oklahoma CAAVA
Association Inc.**

39,000

*Court-Appointed Advocates for
Vulnerable Adults program
maintenance and rural*

**Oklahoma City University Law
School, Native American Legal
Resource Center**

17,500

*Statewide American
Indian Law High School Mock Trial
Competition*

**Oklahoma Indian Legal Services,
Low-Income Taxpayer Clinic**

\$39,000

*Support staff maintenance and
upgrades to phone and
file server systems*

**Oklahoma Lawyers
For Children Inc.**

25,000

*Intern Stand-Alone Program
and volunteer lawyer manual
Program expansion*

**Senior Law
Resource Center Inc.**

15,600

*Law-student interns for
Web page & educational materials*

**Teen Court Incorporated
of Comanche County**

20,000

*Supplemental program
funding and Teen Manual*

**Tulsa Lawyers
For Children, Inc.**

69,365

*Increase staff services, volunteer
lawyer manual and training*

**Tulsa University College
of Law Boesche Legal Clinic**

13,810

Immigrants Rights Legal Clinic Project

**YMCA Oklahoma Youth
& Government Program**

3,000

*Officer Training Program &
Model Legislative Day*

**HOW DO I BECOME A PART OF
ALL OF THIS?** Attorneys and others inter-
ested parties can help to provide services
across Oklahoma through membership in the
OBF Fellows program and other general con-
tributions, as well as through participation in
the IOLTA Program. Join with Oklahoma
attorneys and help us to make a real improve-
ment in the lives of others. Please contact the

OBF at (405) 416-7070 for more information on
the Fellows program. A Fellows enrollment
form follows to begin your participation
today!



Why Volunteer?

By C. Michael Zacharias

You know you should. All bar associations have programs and committees promoting pro bono service.

Because it's the right thing to do.

You don't really need a reason to volunteer your legal talent. Many lawyers chose careers in law because they wanted to help others. The American Bar Association has made delivery of legal services to the disadvantaged a major goal nationwide. Closer to home, the Oklahoma Bar Association has identified a project to represent those who cannot afford legal representation in the civil arena and formed the Access to Justice Committee to deal with that growing need.

All three Oklahoma law schools have programs, clinics and various forms of outreach because legal educators recognize that law students who volunteer are likely to participate in pro bono efforts throughout their careers.

But is it enough? Clearly not, as the needs continue to outstrip the resources and the gap between the haves and the have nots continue to expand.

Legal Aid, formally known as Legal Aid Services of Oklahoma Inc., has its finger in the dike, but the waves of requests for help threaten to overwhelm the system almost daily. Currently, Legal Aid in Oklahoma has a total staff of 132 — 58 of whom are full-time lawyers. There are 12 part-time attorneys, 16 paralegals and another 45 people in clerical and administrative positions. Last year, some 19,085 cases were closed affecting more than 19,000 children. It doesn't take a math whiz to figure out those lawyers have to average closing a case every single day.



Volunteers help. The statistics for 2006 indicate 270 private lawyers handled at least one pro bono case through Legal Aid and closed a total of 399 cases. More current numbers for the past 12 months reflect 283 private attorneys closed 508 cases.

While Legal Aid's Oklahoma volunteer data base contains some 2,200 lawyers, there are only about 300 actively participating statewide.

Don't those numbers make you want to help? They should.

There are more ways to help than signing up to take a case. Continuing education materials and seminars are just as helpful for Legal Aid lawyers and volunteers as everyone else in the field. Family law, landlord/tenant issues, public housing, mental health, homelessness, senior citizens issues, HIV/AIDS assistance, Social Security and bankruptcy are just a few areas where help is needed. You could volunteer in one of the programs where you help provide advice and direction only, in person or on the phone.

Law students and first-time pro bono lawyers need mentors.

Legal Aid is non-profit, supported by grants, gifts and contracts. There is need for fund raisers on both state and local levels.

Mediators are needed to resolve disputes, particularly in cases that would involve

children in adversarial proceedings between parents.

Speakers are needed at the community level to address parents, tenants, seniors and other groups on current legal issues such as living wills, Medicare, Medicaid and other health-related issues.

The community at large looks at lawyers as a resource and as special people, but nothing makes you feel as special as a young woman with a black eye and a baby on her hip who feels a little bit safer because you helped her get a protective order, filed her divorce case, and she wants to say, "Thank you."

If you are tired of all the lawyer bashing jokes, there's an antidote called pro bono service. It's the sort of thing that could put lawyers back on the public pedestal they

once occupied or at least raise them a couple of notches above politicians.

Service to others, being a volunteer is traditional in Oklahoma and even more so in Tulsa. "It doesn't surprise me," observed Karen "Sunny" Langdon reviewing a recent news article which ranked Tulsa at the top of the list of this country's 50 largest metropolitan areas in the number of volunteer hours per resident.

Ms. Langdon, who coordinates private attorney volunteers for the Tulsa Legal Aid office, has nothing but praise for her cadre of volunteers. "They are really good about taking cases," she said, "and I hardly ever get turned down, but I sure could use more lawyers."

On a related note, OBA General Counsel Dan Mur-

dock, who endorses and promotes pro bono service, observed that he could not recall ever receiving a complaint involving pro bono work by a volunteer. "We should all be taking pro bono cases," he said.

Want to feel good about yourself? Take a pro bono case.

For more information or to sign up as a volunteer, go to <http://tinyurl.ocm/2r6egx>.

If you know of an individual or organization that should be recognized for its pro bono efforts, please let us know. Submissions should be forwarded to probono@okbar.org or Pro Bono Services Subcommittee, c/o Judith Maute, University of Oklahoma College of Law, 300 W. Timberdell Road, Norman, OK 73019-0701.

In conjunction with the OBA's 103rd Annual Meeting, the Oklahoma Health Lawyers Association and the OBA Health Law Section invite OBA members and their guests to:

Health Law Update 2007

November 9, 2007

Sheraton Oklahoma City

One North Broadway

Social Hour at 4:30 p.m.

Program at 5:30 p.m.

Dinner at 6:30 p.m.

****Advance Reservations Required****

R.S.V.P. to mike@lacoursedavis.com

Before Noon on November 2, 2007

Featuring:

**Cassell Lawson, Director
Opportunities for Living Life
Oklahoma Health Care Authority
"Public-Private Partnerships For
Long-Term Care Insurance"**

**David B. McKinney, Esq.
GableGotwals
"Developments In
Health Care Law"**

THE 2007 ANNUAL
OKLAHOMA CRIMINAL DEFENSE LAWYERS ASSOCIATION
AWARDS FOR EXCELLENCE IN CRIMINAL DEFENSE

(Deadline: October 19, 2007)

Each year your peers in the practice of criminal defense select three of their own to receive the most prestigious awards for excellence in criminal defense achievements in Oklahoma. These awards are the only awards that are nominated and selected by attorneys that practice criminal defense in Oklahoma. The awards are as follows:

The Clarence Darrow Award

Clarence Darrow was born in Ohio in 1857. After being admitted to the bar in 1878, he became a small-town lawyer for nine years.

During WWI he defended anti-war activists and was critical of The Espionage Act that was used to stifle anti-war activities. You need only mention the names of his famous cases to realize his impact on criminal defense; the *Scopes Monkey Trial* and the *Leopold-Loeb Murder Trials*. A 1936 FBI memo to Clyde Tolson, aide-de-camp to J. Edgar Hoover, gave Mr. Hoover some quotes that Clarence Darrow had made in an article entitled Attorney for the Defendant. It was suggested that Mr. Hoover could use these quotes in speeches to point out how unscrupulous criminal lawyers stimulate disrespect for law and influence crime conditions.

The award recognizes the efforts of an individual who has, during the year, exemplified the zealous criminal defense advocacy that befits the namesake of the award "Clarence Darrow". It is in the deeds and spirit of Clarence Darrow that this award is given each year for the zealous criminal defense advocacy by an individual attorney. The only qualification requirement is that the event(s) upon which the nomination is based must have taken place during the current year.

The Lord Thomas Erskine Award

Lord Erskine was a Scotsman, the third son of the 10th Earl of Buchan, educated at Edinburgh and Cambridge and called to the bar in 1778. He was a strong advocate and defender of popular liberties and constitutional rights. His defense of Thomas Paine cost him his post of attorney general to the Prince of Wales. The award is given to honor a member of the criminal defense bar who has over the years steadfastly placed the preservation of personal liberties over his or her own personal gain or reputation. The award is a cumulative year award and is not limited to any particular activities in any given year.

**The Thurgood Marshall Appellate
Advocacy Award**

Thurgood Marshall, the grandson of a slave, was born in 1908 in Maryland. In 1930, he was denied admission to the University of Maryland Law School due to the fact that he was black. This event was to direct his future professional life.

In 1934, he began his association with the NAACP and dismantled school segregation in his 1954 victory of *Brown vs. Board of Education of Topeka*. He later desegregated graduate schools with his victory in *McLaurin vs. Oklahoma State Regents*. As a Justice for the Court of Appeals for the 2nd Circuit, he made 112 rulings that were all upheld before the United States Supreme Court. As Solicitor General for the United States, he won 14 of 19 cases argued before the United States Supreme Court. In 1967, Thurgood Marshall was the first African American appointed to the United States Supreme Court. He was often the lone voice of dissent against the death penalty and always spoke for voiceless Americans in his opinions. He died in 1993.

The only qualification for the awards is that the nominee must be the appellate attorney of record in the decision that formed the basis of the nomination. However, there is no requirement that the decision must have occurred within the current year.

Please submit written nominations and the reasons therefore to:

OCDLA
P.O. Box 2272
Oklahoma City, OK 73101
Fax (405) 239-2595

The deadline is October 19, 2007. The awards will be announced prior to the OBA Convention and awarded at the OCDLA Annual Meeting on November 8, 2007 at 1:30 pm.

You do not have to be a member of OCDLA to nominate an individual.

Awards not received by October 19, 2007 at the OCDLA post office box will not be considered.

2008 YLD Leadership



CHRISTOPHER CAMP

Immediate Past-Chairperson

Christopher L. Camp is a shareholder and director of the Tulsa firm of Herrold Herrold & Co., where he focuses his practice primarily upon complex civil and appellate litigation, business tort litigation, the uniform commercial code, and labor and employment law. Chris is a December 1999 graduate of TU College of Law, making the dean's honor roll. He received his B.A. from TU in May 1995, where he was a member of the President's Ambassador Council Honor Society and the recipient of an Army ROTC/TU Military Science Scholarship Grant and the General Dynamics Award for Outstanding Leadership. Chris has been admitted to practice in the U.S. District Courts for the Northern, Eastern and Western Districts of Oklahoma, and has also successfully argued cases before the U.S. Court of Appeals for the 10th Circuit. For three consecutive two-year terms beginning in 2001, Chris was elected to a seat on the Board of Directors of the OBA Young Lawyers Division. He is the current

chair of the division, having previously held the offices of OBA/YLD chair-elect, treasurer and secretary. Chris serves on the OBA Board of Governors and the American Bar Association House of Delegates. Chris has been active in several other OBA and TCBA committees, including the OBA Leadership Task Force, along with the Access to Justice, Civil Procedure, Community Service, Disaster Response and Relief, Employment Law, Long-Range Planning and the OBA Awards Committees. He is a member of the American Bar Association, the Oklahoma Trial Lawyers Association, and the American Association for Justice (formerly ATLA), is a Barrister with the Hudson Hall Wheaton Chapter of the American Inns of Court, and has volunteered his time to assist with the Oklahoma Bar Foundation High School Mock Trial Program and the OBA/Habitat for Humanity Justice House. Additionally, Chris has been involved in several charitable and community activities. Along with other YLD board members, Chris has helped implement the "Wills for Heroes" program in Oklahoma. He has performed fundraising for Tulsa's Ronald McDonald House and mentored several Street School students. Chris belongs to the Rotary Club of Tulsa and has been a contributing writer to its monthly publication, the

Gasser. Born in Tulsa, on Aug. 2, 1972, Chris is married to Julie Michelle Berryhill. They now have two sons, Bronson Michael Christopher (9 years) and Broderick Willard Norman (3 years), and one daughter, Abigail Diane (6 years). The Camps attend First United Methodist Church.



KIMBERLY WARREN

2008 Chairperson

Kimberly is a tax senior manager at the firm of Cole & Reed PC. She received her BA in political science and economics from TU and her M.B.A., J.D. and LL.M. in taxation from Capital University. Kimberly is a member of the OBA, American Bar Association, Oklahoma Society and American Institute of Certified Public Accountants. She has served as a director of the OBA/YLD Board of Directors for Judicial District 8 since 2002. Currently serving as chair-elect, Kimberly previously served as secretary and treasurer. She was named OBA/YLD Outstanding Director of the Year in 2004 and Outstanding Officer of the Year in 2005. Kimberly is also a member of the Downtown

Exchange Club and serves on the Board of the Exchange Club Center.

UNCONTESTED ELECTIONS:

The following persons have been nominated. They are running uncontested and will be declared elected at the Annual Meeting of the Oklahoma Bar Association Young Lawyers Division.



RICHARD L. ROSE
Chairperson-Elect

Rick is an associate at the law firm of Miller Dollarhide in Oklahoma City. Rick graduated from Southern Nazarene University (B.S. 2000, distinguished achievement award) and Oklahoma City University (J.D. 2003, magna cum laude). Rick has been active on the OBA/YLD board since 2002, serving as secretary (2005-06), and as both as an ex-officio board member in 2002-03 and as an elected board member 2004-07, co-chairing the Gift of Life Committee. Currently, Rick is the treasurer of the OBA/YLD and co-chair of the Wills For Heroes Committee. He is also the past-chair of the Oklahoma County YLD (2006-07), serving on its board since 2004. In addition to his elected positions, Rick serves as the chair of the Disaster Relief Committee and on the OBA State Legal Referral Service Task Force. Rick is also a Barrister in the Holloway Inn of Court.



MOLLY A. BIRCHER
Treasurer

Molly has been an associate at Hall, Estill, Hardwick, Gable, Golden & Nelson in the Tulsa office for four years. Her primary practice area is employment and labor defense litigation. Molly provides employment counseling and advice to numerous employers and represents employers in employment litigation matters. Molly is currently serving as secretary of the OBA Young Lawyers Division Board of Directors. Molly has served on the board as a Director for Judicial District 6 since 2004 and has been chair of the YLD Membership Committee for the past three years. Molly is also active as an Oklahoma YLD Delegate to the American Bar Association YLD Assembly. In addition, Molly has served on the Tulsa County Bar Association Board of Directors, is a past chair of the TCBA YLD, and was named the TCBA Young Lawyer of the Year in 2006. Molly earned her bachelor of arts degree, with honors, in economics and political science from Fort Hays State University in May 2000. While at Hays, Molly was a state finalist for both the Rhodes and Truman Scholarships. Molly received her J.D. from the University of Kansas School of Law in May 2003. While at Kansas, Molly received the Rice Scholarship, a full tuition scholarship, and was a member of the *Kansas Law Review*. She is admitted to

practice in Oklahoma and Kansas. In addition to bar activities, Molly is also co-administrator for the Council Oak/Johnson-Sontag American Inns of Court, is an ambassador for the Tulsa Young Professionals, and is active in the Junior League of Tulsa and Kirk of the Hills Presbyterian Church.



HANNAH CABLE
District Two

Hannah is from Springfield, Mo. She attended Missouri Valley College, studying political science, criminal justice and Spanish. Following college, Hannah attended the TU College of Law, gaining her J.D. in May 2002; she was sworn into the OBA that August. For the past four years Hannah has held her current position as attorney for the McAlester Child Support Office, serving residents of Pittsburg and Haskell counties. Her child support office is one of only two in Oklahoma that are privatized and operated by Denver-based Policy Studies Inc. Hannah has served on the Young Lawyer Division's Board of Directors for three years. She is active in the Pittsburg County Bar Association. She is also a board member for McAlester's Youth Emergency Shelter.



JOE VORNDRAN

District Eight

Joe is an associate with the Shawnee law firm of Canavan & Associates PLLC. His practice is focused on general civil litigation, family law and municipal law. Joe received his B.A. from OU in May 2003, where he was a member of the OU scholars program, Order of Omega Honor Fraternity and numerous other campus committees. He received his J.D. from the OU College of Law in May 2006, where he was a class representative, on the Dean's Council and a member of the SBA Board of Governors. Joe was admitted to practice of law before all Oklahoma state courts in September 2006. Joe currently serves as the District Eight Representative for the YLD Board of Directors, is on the Membership Committee, was a volunteer for the Oklahoma Bar Foundation Mock Trial Program and recently attended the 2007 OBA Leadership Conference. He is a member of the Pottawatomie County Bar Association, the American Bar Association and the Oklahoma Bar Foundation. Joe also serves on the Board of Directors for the OU Chapter of Sigma Alpha Epsilon and is involved with charities such as the Children's Miracle Network.

CONTESTED ELECTIONS:



NATHAN JOHNSON

Secretary

Nathan practices law and serves as a part-time municipal judge in Lawton. He was born and raised in Oklahoma. He graduated from OU (B.A., economics, 1999) and the OU College of Law (J.D., 2002). He is a member of the American, Federal, District of Columbia, Oklahoma and Comanche County bar associations. Nathan is a past president of the Comanche County Bar Association. He also serves on the OBA Young Lawyers Division Board of Directors, as reporter for the OBA State Legal Referral Service Task Force, and is a Fellow of the Oklahoma Bar Foundation. In his free time he enjoys reading non-fiction, attending Formula One Grands Prix, studying languages and traveling with his wife, Jennifer.



ROY D. TUCKER

Secretary

Roy practices in the areas of employment law, community law and general litigation. He has been a partner in Coulter

Tucker PC since its formation in January 2005. Roy is admitted to practice before the U.S. District Courts for the Northern, Eastern and Western Districts of Oklahoma, as well as the 10th Circuit Court of Appeals. He is an active member of the OBA and the American Bar Association. Since 2005 Roy has served on the Board of Directors for the YLD. In 2006, Roy served as the art show coordinator for the 2006 OBA Annual Meeting, and in that same year was also selected as YLD Director of the Year. Roy was also recently selected to serve as the vice-chair of the YLD Solo/Small Firm General Practice Committee of the ABA. He earned his J.D. in May 2003 from the TU College of Law. Additionally, he received a certificate in public policy/public regulation. He has a bachelor of arts in English and a minor in political science from the University of Central Oklahoma. He is also a graduate of Class 31 of Leadership Tulsa, and as such, continues to be actively involved in the non-profit sector.



MELISSA G. HOLDERBY

District Six and At Large

Melissa was born in Muskogee on June 24, 1980. She is a graduate of TU (B.A. literature and art, minor art history, 2002) and the OU College of Law (J.D., 2005) where she served on the *Oklahoma Journal of Law and Technology*. Melissa was previously with

the law firm of Brewster & De-Angelis PLLC and is now with Robinett and Murphy of Tulsa. Her primary areas of practice are criminal defense, civil litigation and family law. She is admitted to practice in Oklahoma and before the U.S. District Courts Northern, Eastern and Western Districts of Oklahoma and the 10th Circuit Court of Appeals. She is active in the Tulsa County Bar Association, serving on the Young Lawyers Division Executive Committee in 2006-2007 and 2007-2008. She is also a member of the American Bar Association, Oklahoma Trial Lawyers Association, the American Association for Justice and the Tulsa County Criminal Defense Lawyers Association.



BRIANA J. ROSS

District Six and At Large

Briana is a vice president and title attorney at Guaranty Abstract Company in Tulsa, where she focuses her practice primarily on real property law and real estate transactions. Briana is a December 2005 graduate of the TU College Of Law. While at TU, Briana was an editor of the *Tulsa Journal of Comparative and International Law* and was an officer and member of the honors legal fraternity, Phi Delta Phi. Briana received her M.B.A. from the University of Phoenix in 2002, and she received her B.S.B.A. in finance from OSU in 1997. Briana is a member of the Tulsa County Bar Association,

tion, OBA and American Bar Association. She is also a co-chair of the Young Lawyer Committee for the TU Law Alumni Association, and she is an associate member of the Council Oak/Johnson-Sontag Chapter of the American Inns of Court.



ROBERT R. SNOW

District Six and At Large

Robert is the founder and managing member of the Snow Law Firm PLLC, which conducts a wide array of legal counseling and services to its clients throughout Oklahoma focusing its efforts in the Tulsa metropolitan area and surrounding counties. Robert's primary focus has been on family, business and juvenile law matters. He also practices in the areas of criminal, probate, estate planning, debt, property, personal injury, contract law and serves as a court-appointed attorney for several low income clients in Tulsa and Creek county. Robert also serves as an officer and legal counsel for the H&S Drilling Company, a Tulsa-based oil and gas firm. He is a former partner of the Gregory, Shepard & Snow PLLC Law Firm, a member of the American Bar Association, Tulsa County Bar Association, Creek County Bar Association, Oklahoma Trial Lawyers Association, Tulsa Criminal Defense Lawyer's Section and the Tulsa Family Lawyer Section of the OBA. Robert majored in management information sys-

tems receiving his bachelor of business administration from the Price College of Business at OU. He then received his J.D. from the TU College of Law in May 2006. While in law school, Robert served as a judicial intern for the Tulsa County District Court as well as a licensed legal intern for the Tulsa County District Attorney's Office. He also worked part-time for the TU College of Law as an adjunct writings professor's teaching assistant and contributed to the health law program at the TU Boesche Legal Clinic. He was a member of the Board of Advocates, member of the Student Bar Association, Board of Advocates and the Tulsa County Bar Association. Robert has also been involved in charitable and community activities including the Muscular Dystrophy Association's Mission Possible Lock-Up fundraiser and pro bono representation through the Legal Aid Services of Oklahoma.



JOHN PAUL TRUSKETT

District Six and At Large

John serves as chair-elect for the Tulsa County Bar Association Young Lawyers Division. He is an associate with Eldridge, Cooper, Steichen & Leach PLLC in Tulsa. John has been active with the OBA/YLD since earlier this year. Prior to joining Eldridge, Cooper, John served as a judicial intern to Linda G. Morrissey in the Tulsa County District Court, as a law clerk for

both Legal Aid Services of Oklahoma and Domestic Violence Intervention Services, as well as practicing law with another Tulsa firm. At TU Law, John served as the symposium and articles editor for the *Tulsa Journal of Comparative and International Law*. John also published an article: "The Death Penalty, International Law," and Human Rights, 11 *Tulsa J. Comp. & Int'l L.* 557 (2004). John is admitted to practice in all Oklahoma state and federal courts and the 10th Circuit Court of Appeals. John works in the area of complex civil litigation, including specifically products liability, insurance defense and employment law. In 2006, John served on the OBA Professionalism Committee and made a presentation to the Youth Services of Tulsa titled "Are All Lawyers Like Denny Crane? Ethics and Justice." John is a member of the American Inns of Court (Council Oak, Johnson-Sontag Inn), the Tulsa County Bar Association, and the Tulsa Young Professionals. John supports local charities, including Goodwill, Habitat for Humanity and Susan G. Komen Race for the Cure. John recently was invited to and attended the 2007 OBA Leadership Conference.



DANIEL ZEMKE

District Six and At Large

Daniel was born in Detroit, Mich., on June 7, 1968, and has been practicing law since

being admitted to the Oklahoma bar in 2004. He holds degrees from the University of San Francisco (B.A., American history, 1991), Stanford University (A.M., education, 1997) and the University of Tulsa (J.D., 2004). During law school he was managing editor of the *Tulsa Journal of Comparative and International Law*, 2004 and a member of the American Trial Lawyers Association Competition Team for 2002. Prior to coming to Robinett & Murphy, he worked at Tueller & Associates PC in Telluride, Colo., Herrold Herrold & Co. PC in Tulsa and as a legal fellow for the TU Boesche Legal Clinic. He is currently a member of the OBA/YLD Board of Directors and a member of the Tulsa County Bar Association and the American Bar Association. His practice areas include family law, real estate and civil litigation.



TINA L. IZADI

District Three and At Large

Tina is an assistant attorney general in the litigation division of the Office of Attorney General, state of Oklahoma. She received a B.S. degree from OSU in 1996 and her J.D. from the OU College of Law in May 1999. She is admitted to practice before the Oklahoma Supreme Court; Chickasaw Nation Tribal Court; U.S. District Courts for the Eastern, Northern and Western Districts of Oklahoma; the 5th and 10th Circuits of the U.S. Court of Appeals and the U.S.

Supreme Court. Presently, Tina serves on the OBA Law Day Committee. She is a member of the OBA Litigation Section, OBA Government and Administrative Law Practice Section, and OBA Appellate Practice Section. She is also a member of the Oklahoma County Bar Association and Young Lawyers Division of the OCBA and OBA; and the Ruth Bader Ginsburg Inn of Court. Recently she attended the OBA Leadership Conference in August 2007. Tina received the OBA Maurice Merrill Golden Quill Award in 2005. Additionally, she has served on the Board of Directors for the Oklahoma County Bar Association YLD. Tina began her legal career as a staff attorney for Legal Aid of Western Oklahoma Inc. She was an associate for Riggs, Abney, Neal, Turpen, Orbison & Lewis and is the former staff attorney for the ACLU of Oklahoma Foundation.



JENNIFER H. KIRKPATRICK

District Three and At Large

Jennifer is an attorney in Phillips McFall's business department and a member of the firm's governmental relations practice group, representing both privately-held and public companies in the areas of civil litigation, bankruptcy, creditors' rights, commercial and administrative law. She is admitted to practice before all Oklahoma courts, the U.S. District Courts for the Western, Eastern and

Northern Districts of Oklahoma and the 10th Circuit Court of Appeals. Jennifer received her education at Cameron University (B.A. 1996), OU (M.A. 1999) and OCU (J.D. 2002). While at OCU, she was a member of Phi Delta Phi, the American Bar Association National Appellate Advocacy team 2001 (regional finalist), 2002 and Order of the Barrister. Additionally, she was the recipient of the Cason Conger Law Scholarship and a merit scholarship and was awarded a CALI Award for Excellence in Litigation Practice. Jennifer is a member of the Oklahoma County Bar Association, the OBA, the American Bar Association, the Oklahoma Association of Defense Counsel and the Defense Research Institute. She is also actively involved with the Oklahoma Academy for State Goals. Jennifer lives in Edmond with her husband Kyle and their two sons, and she is a volunteer for Life Church.



LEANNE MCGILL

District Three and At Large

LeAnne is an attorney with the law office of Cathy M. Christensen PC in Oklahoma City. Born and raised in Oklahoma City, LeAnne received her B.A. in English and political science from OSU in 2003 and her J.D. from OCU in 2006. While in law school, LeAnne served two terms as the National Secretary Treasurer of the American Bar Association Law Student Divi-

sion and one term as the OBA Law Student Division Chair. Since graduating, LeAnne has served on the OBA Mentoring Task Force Committee, the Law Day Committee, the Women in Law Committee and is one of the program track planners for the 2007 Annual Meeting. LeAnne also serves on the YLD CLE and Law School committees. In addition to her involvement within the OBA, LeAnne has been appointed to the American Bar Association Young Lawyers Division Programming Team and is a board member for the Oklahoma County Bar Association Young Lawyers Division. Outside of bar activities, LeAnne is very involved with charity work through the American Cancer Society and currently serves as the registration and logistics chair and the coordinator for the Youth Outreach Committee for the Oklahoma City Relay for Life.



SHANDA MCKENNEY

District Three and At Large

Shanda obtained her B.S. degree in secondary education/social studies from OSU in 1998. She attended OCU School of Law, graduating summa cum laude in 2002. Since graduation, she has practiced law at the Oklahoma County Public Defender's Office, Crowe & Dunlevy PC and Love, Beal & Nixon PC. Shanda's bar association activities include serving as chair-elect of the Oklahoma County

Young Lawyers Division in 2004-05, chair from 2005-06 and election to serve as an alternate delegate for the OCBA for 2007-09. She was named the OCBA's Outstanding Young Lawyer for 2005-06. Shanda has served on the OBA/YLD Board of Governors since 2003, chaired the OBA/YLD Law Schools Committee from 2003-06, and was named the YLD's Outstanding Committee Chairperson for 2005. Shanda serves by appointment as the OBA's representative to the State Board of Medicolegal Investigations and is a member of the OBA Civil Procedure Committee (2003-present), Bench and Bar Committee (2005-present) and the Mentorship Task Force (2007). She is also a member of the American Bar Association (2002-present). Outside of bar association activities, Shanda is also a member of the Ruth Bader Ginsburg American Inn of Court and has volunteered for Habitat for Humanity, Oklahoma Lawyers for Children and Ask-A-Lawyer over the last several years. Shanda has a husband, Chad, and an infant son, Connor.



SAUL OLIVAREZ

District Three and At Large

Saul was born in Quincy, Wash., in 1980. Shortly thereafter, his family moved to the Dallas/Fort Worth metroplex where he grew up. He graduated from South Grand Prairie

High School in 1998 and then attended the University of Texas at Arlington, finishing with his bachelor's degree in political science in 2002. Saul then went on to OCU School of Law and obtained his law degree in 2006. After a brief time with a small Oklahoma City law firm, he left to open Olivarez & Looper PLLC in November 2006. His main areas of practice include immigration law, personal injury law and business law. He is also proficient in Spanish. He is licensed to practice in U.S. District Court for the Western District Of Oklahoma. He is a member of the Oklahoma County Bar Association (member of the Criminal and Family Law Sections), and founder and president of the Oklahoma Hispanic Bar Network. He is also a member of the Hispanic National Bar Association, the Greater Oklahoma City Hispanic Chamber of Commerce, American Bar Association and DBA Metro.



A. GABRIEL BASS

At Large Rural

Gabriel is an attorney at Bass Law Firm PC with offices in El Reno and Yukon. He joined the firm in 2007 and practices primarily in the fields of estate planning, probate and trusts, real estate, insurance, oil and gas and civil litigation. Prior to joining the firm, Gabriel served in the U.S. Marine Corps from 2002-07. Following his initial train-

ing to be an infantry rifle platoon commander, he served as a defense counsel at Marine Corps Air Station Miramar, San Diego, Calif., and Marine Corps Base Camp Pendleton, Calif. In that position, Gabriel provided legal counsel to over 400 Marines and sailors and represented over 120 of them before courts-martial and adverse administrative boards. He was awarded the Navy and Marine Corps Achievement Medal in 2007. From 2000-2002, Gabriel was a director of business development and product management at Handango Inc., a software company located in Fort Worth, Texas. Gabriel received his J.D. with honors and master of science in information systems from OU in 2003. He received his bachelor of business administration with academic distinction in accounting and finance from OU in 1998. He is a graduate of the U.S. Marine Corps' Officer Candidates School, where he was on the commanding officer's honor roll. He also graduated with the highest academic standing from U.S. Marine Corps' the Basic School and the U.S. Navy's Naval Justice School. Gabriel is a volunteer attorney in the OBA's Disaster Legal Services program. He is also a member of the American Bar Association and the Canadian County Bar Association, where he serves on the Web site Development Committee.



KALEB HENNIGH

At Large Rural

Kaleb is an associate attorney with Brown & Associates in Enid where he now focuses his practice on business and commercial transactions, estate planning and real estate. Kaleb was born and raised near Laverne, a small town located near the Oklahoma panhandle. Upon obtaining his J.D. from the OU College of Law, he moved to northwest Arkansas where he attended the University of Arkansas School of Law and obtained his LL.M. in agricultural law. While working to obtain his LL.M., he served as a graduate assistant at the National Agricultural Law Center, where he conducted extensive research on multiple issues within agricultural law and drafted his thesis on the new National Animal Identification System and the application of FOIA laws. Upon completing his LL.M. degree, he remained in northwest Arkansas, working as an associate attorney in an intellectual property law firm. There he worked with several agricultural corporations regarding intellectual property protection and helped establish an agricultural bankruptcy practice which received regional recognition for its efforts in assisting immigrant farmers. Kaleb, his wife Jennifer and their son Karsen currently reside in Enid.

OBA YOUNG LAWYERS DIVISION 2007 OFFICIAL BALLOT

All members of the division (members of the OBA in good standing admitted to practice in any jurisdiction 10 years ago or less) are eligible to vote. All voters shall:

1. Mark the ballot for candidates as set forth below;
2. Affix the voter's Oklahoma Bar Journal mailing label to the ballot where indicated below;
3. Sign the ballot, which shall certify the voter is qualified and entitled to cast a ballot; and
4. Mail or deliver the ballot to the following address:

Keri Williams, 400 S. Monroe, Stillwater, OK 74074

Ballots must be received at the above address no later than 5 p.m., Nov. 2, 2007.

FAILURE TO CAST A BALLOT IN STRICT CONFORMITY WITH THESE RULES SHALL INVALIDATE THE ENTIRE BALLOT

For the office of Secretary of the OBA/YLD, **VOTE FOR ONE** person by circling his/her name. **All members of the OBA/YLD are eligible to cast a vote for this office.**

Nathan Johnson

Roy Tucker

For the office of Director, Judicial District No. 3 of the OBA/YLD (Oklahoma County), **VOTE FOR NO MORE THAN TWO** people by circling their names. (Note: There are 2 seats open on the Board for District No. 3; the two people receiving the most votes will be elected.) **Only OBA/YLD members residing in District No. 3 are eligible to cast a vote for this office.**

Tina Izadi

Jennifer Kirkpatrick

LeAnne McGill

Shanda McKenney

Saul Olivarez

For the office of Director, Judicial District No. 6 of the OBA/YLD (Tulsa County), **VOTE FOR ONE** person by circling his/her name. (Note: There is 1 seat open on the Board for District No. 6.) **Only OBA/YLD members residing in District No. 6 are eligible to cast a vote for this office.**

Melissa Holderby

Briana Ross

Robert Snow

John Truskett

Daniel Zemke

For the office of Director, At Large Rural of the OBA/YLD, **VOTE FOR ONE** person by circling his/her name. (Note: There is 1 seat open on the Board for At Large Rural.) **All members of the OBA/YLD are eligible to cast a vote for this office.**

Gabe Bass

Kaleb Hennigh

For the office of Director, At Large of the OBA/YLD, **VOTE FOR NO MORE THAN THREE** people by circling their names. (Note: There are 3 seats open on the Board for At Large; the three people, not elected above, receiving the most votes will be elected.) **All members of the OBA/YLD are eligible to cast a vote for this office.**

Gabe Bass

Kaleb Hennigh

Melissa Holderby

Tina Izadi

Jennifer Kirkpatrick

LeAnne McGill

Shanda McKenney

Saul Olivarez

Briana Ross

Robert Snow

John Truskett

Daniel Zemke

Attach OBJ Mailing Label Here

Signature _____

There will be no disclosure of voter ballots. Members of the Nominating Committee are not eligible to vote except in the case of a tie, which shall be broken by secret ballot of the Nominating Committee.

Election results will be announced at the Annual Meeting of the Division held in conjunction with the OBA Annual Meeting.

Calendar



October

- 10 OBA Clients' Security Fund Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Micheal Salem (405) 366-1234
- OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Steven Dobbs (405) 235-7600
- 12 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
- 17 OBA Diversity Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030
- Ginsburg Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 18 OBA Work/Life Balance Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280
- 19 OBA Board of Governors Meeting;** Custer County; Contact: John Morris Williams (405) 416-7000
- 23 Death Oral Argument, Wade Greely Lay – D-2005-1081;** 9 a.m.; Court of Criminal Appeals Courtroom
- 26 Uniform Laws Committee Meeting;** 3:30 p.m.; Oklahoma Bar Association and Tulsa County Bar Center, Tulsa; Contact: Frederick H. Miller (405) 235-4100



November

- 7-8 OBA 103rd Annual Meeting;** Sheraton Hotel, One North Broadway, Oklahoma City
- 8 OBA Board of Governors Meeting;** Sheraton Hotel, One North Broadway, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- OBF Board of Trustees Meeting;** Sheraton Hotel, One North Broadway, Oklahoma City
- 12 Veteran's Day** (State Holiday)
- 13 OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 521-5845
- 14 Ginsburg Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 22-23 Thanksgiving Holiday** (State Holiday)
- 28 OBA Clients' Security Fund Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Salem (405) 366-1234



December

- 12 State Legal Referral Service Task Force Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Dietmar Caudle (580) 248-0202
- 14 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
- 25 Christmas Day** (State Holiday)

This master calendar of events has been prepared by the Office of the Chief Justice in cooperation with the Oklahoma Bar Association to advise the judiciary and the bar of events of special importance. The calendar is readily accessible at www.oscn.net or www.okbar.org.

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An affiliate of Genetica DNA Laboratories, Inc.

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- **Results >99.9%**
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- **NEXT DAY RESULTS Available**
- **Laboratory is accredited by NAABB, CAP, NYSDOH, NFSTC, and (FQS-I, ISO/IEC 17025).**
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Laboratory is accredited by the American Association of Blood Banks (AABB), College of American Pathologists (CAP), New York State Department of Health (NYSDOH), National Forensic Science Technology Center (NFSTC), and Forensic Quality Service-International (FQS-I, ISO/IEC 17025).

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Joe Womack, senior vice president and manager of the Oklahoma City office, seated left. Alyssa Kauter, assistant vice president, and vice presidents Cameron Turner and John Austin.

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Bar Members Stand up for Children

Anyone who drove near the state Capitol the third week of September probably noticed the 1,400 American flags embedded in the south median. The flags weren't just there for decoration – each stood for one child across the country who died in the last year because of child abuse or neglect. Forty-one Oklahoma flags stood closest to the Capitol, each representing the 41 Oklahoma children who died in 2006.



This was the first Healing Field event in Oklahoma City. Healing Fields are set up in cities across the country to raise awareness for the prevention of child abuse. Oklahoma County District Attorney David Prater was the keynote speaker at the event, and Oklahoma County District Judge Barbara Swinton also spoke.

"What I see are not flags, but dead children's bodies," Mr. Prater said. "We should not rest

until we can turn around and not see one flag."

The event was sponsored by several organizations, including the Exchange Club Center for the Prevention of Child Abuse Oklahoma, the Crowe & Dunlevy Foundation and Oklahoma Lawyers for Children.

Bar Association Staff Updates

In the last few months, there have been several staff changes at the OBA. Debbie Brink has returned as the executive assistant to the executive director, and Debra Jenkins has come on board in the Law-related Education Department. Brandon Haynie is a new addition to the Communications Department. Two long-time employees in the Office of the General Counsel have retired – Assistant General Counsel Mike Speegle and Investigator Ray Page. Take time to welcome our new employees the next time you are at the bar center.



Want to save money?

Register for the OBA Annual Meeting before the early bird registration deadline of Oct. 12! Fill out the registration form in this issue, or register online at www.okbar.org

OU Honors Distinguished Journalism Alumni

The OU Gaylord College of Journalism and Mass Communication will honor several of its outstanding graduates at its annual Alumni Awards Banquet on Oct. 11. Among the distinguished alumni award recipients are OBA members Lt. Gov. Jari Askins and Bob Burke.

Ms. Askins received her B.A. in journalism from OU in 1975 and a J.D. from the OU College of Law. She was sworn in as Oklahoma's 19th lieutenant governor earlier this year. She served as special district judge for Stephens County from 1982-1990, and she served District 50 for 12 years in the Oklahoma House of Representatives, earning the position of Democratic house leader in 2005. She won statewide election as lieutenant governor in 2006, becoming the first woman Democrat to serve in that office. She is a director of Arvest Bank in Duncan and a member of the Duncan Noon Lions Club, the Duncan Chamber of Commerce, Leadership Oklahoma, Oklahoma Academy of State Goals and the First Christian Church. She was inducted into the Oklahoma Women's Hall of Fame in 2001.

Mr. Burke received a bachelor's degree in journalism from OU in 1970 and earned his J.D. from OCU. He has written or co-written 65 books about Oklahoma on diverse topics such as aviation, baseball and religion. He served as a journalist and sportscaster for local radio and television stations in Oklahoma before joining the American Broadcasting Company in New York. He has held numerous positions in state government including director of a large state agency during Gov. David Boren's administration. He received the Oklahoma Book Award for non-fiction in 1999 for *From Here to Eternity: The Life of Wiley Post and the Winnie Mae*. His biography on Bryce Harlow was a Pulitzer Prize nominee and won the Oklahoma History Book of the Year Award from the Oklahoma Historical Society.



A student completes an exercise in peer mediation at the PROS program at the bar center.

Learning Lessons in Conflict Resolution

More than 50 teachers, students and school administrators attended the PROS (Peaceful Resolution for Oklahoma Students) program for two days at the end of September at the Oklahoma Bar Center. PROS is a collaborative project of the Early Settlement Programs administered by the Oklahoma Supreme Court, Administrative Office of the Courts and the OBA Law-related Education Department. This school-based peer mediation program encourages young people to resolve conflicts in a positive and constructive manner. Strategies center on building strong student self-esteem and teacher efficacy in dealing with on-site conflicts such as fighting and harassment.

The Eugene Kuntz Conference on Natural Resources Law & Policy

Friday, October 26, 2007 • Cox Convention Center, OKC

MCLE: OK - 6.0 including 1.0 hour of ethics

TX - 5.0 including 1.0 hour of ethics

AAPL: 4.75 RPL continuing education credit

4.75 CPL recertification credits including .75 ethics

Conference Schedule

7:45 - 8:30 a.m.	Registration and Continental Breakfast	12:00 - 1:15 a.m.	Luncheon and Presentation of the Eugene Kuntz Award
8:30 - 8:45 a.m.	Opening Remarks	1:15 - 2:05 p.m.	Operator/Non-operator Expense Issues <i>Greg Mahaffey, Mahaffey & Gore, PC, OKC</i>
8:45 - 9:35 a.m.	Recent Developments in Energy Law <i>Mark Christiansen, Crowe & Dunlevy, OKC</i>	2:05 - 2:55 p.m.	JOA's Unanswered Questions: What are the Drafting Issues <i>Arthur Wright, Thompson & Knight, Dallas, TX</i>
9:35 - 10:25 a.m.	Water Rights <i>Professor Drew Kershen, University of Oklahoma, Norman</i>	2:55 - 3:10 p.m.	Break
10:25 - 10:40 a.m.	Break	3:10 - 4:00 p.m.	Navigating on 19th Century Paths to 21st Century Title Opinions <i>Benjamin Hackett, OKC</i>
10:40 - 11:40 a.m.	Legal Ethics in Energy Practice: Baselines and Examples <i>Professor Irma Russell, Tulsa University, Tulsa</i>	4:15 p.m.	Adjourn

Sponsored by The University of Oklahoma College of Law in cooperation with the College of Continuing Education and the Oklahoma Bar Association Mineral Law Section

The Eugene Kuntz Conference on Natural Resources Law & Policy

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Cancellation Policy: A full refund will be granted for cancellations received before October 15, 2007. After that date, an administrative fee of 35% will be charged. No refund will be issued for cancellations received on or after the seminar date. Substitute participants may attend.

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A Century of Trial Basics

DATES & LOCATIONS: **Tulsa**
October 19, 2007
Crowne Plaza Hotel
100 E. 2nd St.

Oklahoma City
October 26, 2007
Oklahoma Bar Center
1901 N. Lincoln Blvd.

CLE CREDIT: This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 1 hour of ethics. For course approval in other states, contact the CLE Registrar. Each presentation contains ten (10) minutes of ethics.

TUITION: \$150 for early-bird registrations received, with payment, at least four full business days prior to the seminar date; \$175 for registrations received within four full business days of the seminar date. Register online at www.okbar.org/cle.

CANCELLATION POLICY: Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. No requests for refunds or cancellations will be accepted on or after the seminar date.

Program Planner/Moderator

Drew Neville, Hartzog Conger Cason & Neville, Oklahoma City

Program:

8:30 a.m.	Registration and Continental Breakfast	10:50	Demonstrative Exhibits <u>Tulsa Program</u> John Tucker , Rhodes, Hieronymus, Jones, Tucker & Gable, Tulsa <u>Oklahoma City Program</u> Robert D. Nelson , Hall, Estill, Hardwick, Gable, Golden & Nelson, Oklahoma City
9:00	Voir Dire <u>Tulsa Program</u> Joe Farris , Feldman, Franden, Woodard, Farris & Boudreaux, Tulsa <u>Oklahoma City Program</u> Terry W. Tippens , Fellers, Snider, Blankenship, Bailey & Tippens, Oklahoma City	11:40	Networking lunch (included in registration)
9:50	Break	12:10 p.m.	Direct Examination <u>Tulsa Program</u> Ted Sherwood , Ted Sherwood and Associates, Tulsa <u>Oklahoma City Program</u> Robin Fields , Connor & Winters, Oklahoma City
10:00	Opening Statements <u>Tulsa Program</u> Phil Richards , Richards & Connor, Tulsa <u>Oklahoma City Program</u> James A. Kirk , Kirk & Chaney, Oklahoma City		

1:00

Cross Examination

Tulsa Program

Roy Breedlove, Fellers,
Snider, Blankenship, Bailey &
Tippens, Oklahoma City

Oklahoma City Program

John N. Hermes, McAfee &
Taft, Oklahoma City

2:00

Closing Argument

Tulsa Program

Amy Kempfer, Best & Sharp,
Tulsa

**Oklahoma City
Program**

Charles E. Geister, Hartzog
Conger Cason & Neville,
Oklahoma City

1:50

Break

2:50

Adjourn

A Century of Trial Basics

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October 19, 2007
Crowne Plaza Hotel

☐ **Oklahoma City**

October 26, 2007
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Legal Aid Services of Oklahoma, Inc. ♦ Oklahoma Indian Legal Services, Inc.
A FAMILY PRACTICE MONTAGE XI
Selected Topics for Pro Bono Attorneys
Monday, October 22, 2007

Oklahoma Bar Center, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma
MCLE Credit of 7 Hours, including 1.0 hours of ethics

AGENDA

- 8:30 a.m. Registration
- 9:00-9:05 Welcome
- 9:05-9:55 Changes to the Oklahoma Rules of Professional Conduct – Gena Hendryx, OBA Ethics Counsel
- 10:00-10:50 Effects of Domestic Violence on Children – Kristie Mitchell, YWCA
- 10:50-11:00 Break
- 11:00-11:50 QDRO's: From Beginning to End and Beyond – Jesse L Sumner, Jr., Allstate Insurance Co
- 11:50- 1:00 Lunch (on your own)
- 1:00- 1:50 Working with Child Support Enforcement Division as a Partner, Amy Wilson, DHS CSED
- 1:55- 2:45 How to Get Confidential Child Welfare Records – Gene Calloway, DHS Child Welfare
- 2:45-2:55 Break
- 2:55- 3:45 Helping Domestic Violence Victims through the Legal System - Connie Smothermon, OU
- 3:50 – 4:40 Immigration Law – Kelly Basey, Winningham and Stein, Oklahoma City

**THERE IS NO REGISTRATION FEE FOR ATTORNEYS WHO PRESENTLY
SERVE OR WHO ARE WILLING TO SERVE ON A LOCAL PRO BONO PANEL**

Seminar Registration – Family Practice Montage XI

- ☐ Please register me, I am an active member of my local Pro Bono Panel
- ☐ Sign me up as a Pro Bono Attorney and register me for the seminar

You may register for this seminar online at <http://www.probono.net/ok>. You will receive confirmation via email. Materials will be available prior to the seminar at the above website in the Advocate Resource Center Library PRIOR to the seminar. To keep this seminar FREE for all, we're asking you to take advantage of this web site when you need the materials or print them in your office. The materials are in a password protected area of the site.

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Firm _____ OBA No. _____

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Street City Zip County

Questions? Cindy Goble 405-488-6823 or 1-800-421-1641

You may also mail or fax your registration form to: Cindy Goble, Legal Aid Services of Oklahoma, Inc., 2901 N Classen Blvd, Ste 112, Oklahoma City, OK 73106, Fax: (405) 488-6763

Kudos

The Oklahoma County Bar Association has announced its 2007-2008 officers and directors, who took office on Sept. 1. New officers are **Charles E. Geister III**, president; **Jim Kirk**, president-elect; **Judge Bryan C. Dixon**, vice president; and **Sheila D. Barnes**, law library trustee. Directors are **Judge Timothy DeGiusti**, **John Heatly**, **David W. Kisner**, **Judge E. Bay Mitchell III**, **Tracy Pierce Nester** and **Larry M. Spears**.

The Tulsa County Bar Association has announced its 2007-2008 officers: President **Martha Rupp Carter**; President-Elect **Leonard Pataki**; Vice President **Judge Deirdre Dexter**; Secretary **Julie Evans**; Treasurer **Tom Nally**; Library Trustee **Faith Orlowski**; ABA Delegate **Sharon Corbitt**; At-Large Directors **Pat Cremin**, **Erin Donovan**, **Blake Givens** and **Fred Slicker**; and Budget Chair **Adam Marshall**.

Hartzog Conger Cason & Neville announces that **Amy Sine** has been elected president of the Oklahoma City Estate Planning Council. The council is an interdisciplinary organization for professionals involved in estate planning. It strives to foster understanding of the proper relationship between the functions of the life

underwriter, trust officer, attorney, accountant and other parties having to do with estate planning, and to encourage cooperation of persons acting under those disciplines. As a partner at Hartzog Conger Cason & Neville, Ms. Sine's practice focuses on wealth transfer planning, trusts and estates, and tax planning and controversies.

Bernard Jones of McAfee & Taft has been selected to serve on the American Cancer Society Government Relations Committee for the High Plains Division, a six-state area including Hawaii, Kansas, Missouri, Nebraska, Oklahoma and Texas. As a member of the committee, Mr. Jones will assist in the decision-making process for advocacy issues that impact the American Cancer Society. His practice currently encompasses the areas of general/commercial litigation, as well as labor and employment, family law and products liability litigation.

Timothy J. Bomhoff of McAfee & Taft has been selected as a Fellow of the Litigation Counsel of America, a trial lawyer honorary society comprised of experienced and effective litigators throughout the United States. Mr. Bomhoff's practice consists of a wide range of civil litigation involving complex business cases, labor and employment, securities arbitrations, products liability, mass tort, oil and gas, and contract disputes.

Marissa Lane was recently appointed by the U. S. Bankruptcy Court to be one of the first Patient Care Ombudsman both in Oklahoma City and El Paso, Texas. The role of the Patient Care Ombudsman is a relatively new position created when the federal bankruptcy code was revised. Ms. Lane is a registered nurse, who returned to college to get her law degree and has specialized in medical legal issues for more than 10 years.

Crowe & Dunlevy announced director **Karen Rieger** has been reappointed by Gov. Brad Henry as a member to the Oklahoma Cerebral Palsy Commission, which operates a state-owned hospital for children with developmental disabilities. She will serve through July 2010. Ms. Rieger has been involved with the J.D. McCarty Center Foundation since 1999 and was first appointed to the commission in 2005. She recently was elected vice chair of the commission.

Elizabeth Dalton Tyrrell, an attorney and shareholder with McAfee & Taft, has been elected president of Travelers Aid and Homeless Assistance Center. Since joining the board of directors in 2004, she has served in various leadership capacities and has been actively involved in the organization's annual fundraising campaign and American Tourist event. She most recently served as vice

president of the board of directors.

On The Move

Conner & Winters announces that **Gary L. Betow** has joined the firm as a partner in its Tulsa office. Mr. Betow handles matters in all areas of finance, with particular focus in the areas of banking and finance, commercial transactions and consumer credit. He works in a variety of industry sectors including banking, real estate, health care and energy. Mr. Betow earned his undergraduate degree, with highest honors, from OU and graduated from Harvard Law School. He is currently serving as a commissioner of the Oklahoma Commission on Consumer Credit, the governing body of the Oklahoma Department of Consumer Credit.

Irwin H. Steinhorn, a senior partner and director of Conner & Winters, located in its Oklahoma City office, has begun his 28th year as an adjunct professor of law at OCU School of Law teaching Agency, Partnership and Limited Liability Company Law during the 2007 fall semester. Mr. Steinhorn has been an adjunct professor at OCU Law School since 1980, teaching courses in corporate, securities, agency/partnership and environmental law. Mr. Steinhorn practices principally in the areas of corporate, securities and environmental law.

The Tulsa law firm of Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile announces that **Michael A. Simpson** has joined the firm as an associate. Mr. Simpson graduated magna cum laude with a B.A. from American University in 1995 and received a J.D. with honors from the University of Maryland School of Law in 1998. His practice areas include commercial and contract litigation, construction law, insurance defense, insurance coverage, negligence and products liability, with particular experience in complex motions and appellate advocacy.

Angela D. Ailles & Associates, Employees of the Corporate Law Department State Farm Mutual Automobile Insurance Company, announce that **Matthew B. Wade** and **Brant M. Elmore** have joined the firm as associates. Mr. Wade is a 2005 graduate of the OU College of Law. He was previously employed by Nash, Cohenour, Kelley & Giessmann. Mr. Elmore is a 1998 graduate of the OU College of Law. He was previously employed as the Managing Assistant District Attorney in Garvin County.

Crowe & Dunlevy announced that **Alexander F. King** has rejoined the firm in its Tulsa office. Mr. King returns as a director with Crowe & Dunlevy from Dollar Thrifty Automotive Group where he served as a corporate attorney. Mr. King will practice primarily in litigation but will also practice corporate law, labor and employment, franchise and intellectual

property. He received his bachelor of arts degree from the University of Kansas in 1995 and his J.D. from Georgetown University Law Center in 1998, where he wrote for the Georgetown Immigration Law Journal.

McBride & Associates announces that **Teresa D. Gerber** has joined the law firm. Ms. Gerber is a recent graduate from the OCU School of Law. She graduated summa cum laude, third in her class, as a Hatton Sumners Scholar. She is an OU alumna, holding degrees in English and psychology. Ms. Gerber was most recently employed with the Cleveland County District Attorney's Office. Her practice areas with the firm will include criminal law, bankruptcy and estate planning.

Fellers, Snider, Blankenship, Bailey & Tippens announces the addition of **Carole L. Houghton** as an associate in its Oklahoma City location. Ms. Houghton has nearly 10 years of experience litigating insurance coverage, bad faith, personal injury and commercial disputes. She also has extensive experience in aviation and commercial transactions including acquisition, sales, leases, loans and litigation. Ms. Houghton provides general counsel in the areas of aircraft title, finance and leasing, particularly with respect to the U.S. registration of aircraft and recording of security interests at the Federal Aviation Administration Registry in Oklahoma City.

T. Anne Mize has recently opened her law practice in Broken Arrow. She is a general practitioner whose

law practice is focused in the area of criminal law, family law and business law. Her office is located at 307 S. Main St., and she can be reached by telephone at (918) 872-1200 or e-mail at tannelawyer@aol.com.

Ken Felker and Lori A. Sander announce the formation of their new firm as Felker, Sander & Associates PC. The firm's practice concentrates on creditor's rights, subrogation and defense in civil actions. It is located at 4045 NW 64th St., Suite 510, Oklahoma City, 73116; (405) 842-7305.

William H. Hickman and Jeremy R. Fitzpatrick announce the formation of their new firm, Hickman & Fitzpatrick PLLC. The firm will focus its practice in the areas of oil and gas law, outdoor advertising law, condemnation, real estate, government contracting and commercial litigation. Mr. Hickman was formerly the managing partner with the Oklahoma City firm of Moricoli, Matula, Schovanec & Hickman, and received his J.D., with highest honors, in 1999 from OU. Mr. Fitzpatrick was formerly an associate attorney with the firm of Moricoli, Matula, Schovanec & Hickman, and received his J.D. from OU in 2004. The firm may be contacted at 119 N. Robinson, Suite 250, Oklahoma City, 73102; (405) 605-2375; Fax: (405) 605-2374; www.hickmanfitzpatrick.com.

Robert J. Barron retired from the U.S. Army Reserve after 22 years of service at the rank of Major. He is a graduate of OCU Law class of 1999 and maintains a solo practice focusing on

immigration and deportation defense. He can be reached at 320 S. Cascade Ave., 2nd Floor, Colorado Springs, CO 80903; (719) 634-5545; Fax: (719) 634-8535; robertjbarron@worldnet.att.net

Conner & Winters announces the opening of a new office in Dallas, Texas. The office may be reached at Carillon Towers – East, 13601 Preston Road, Suite 940E, Dallas, Texas 75240; (214) 446-1002; Fax: (214) 446-1005. Conner & Winters also has office locations in Tulsa; Oklahoma City; Fayetteville, Ark.; Santa Fe, N.M.; Houston, Texas; Jackson, Wyo.; and Washington, D.C.

Rhonda G. Rudd announces the relocation of her office to 1821 N. Classen Blvd., Suite 220, Oklahoma City, 73106. You may reach her by phone at (405) 604-5923, fax at (405) 606-8483 or e-mail at rrlawokc@coxinet.net. Ms. Rudd has practice experience in divorces and child custody, is a conflict attorney with the Oklahoma County Public Defender's Office - Juvenile Division and runs a general practice office.

The Tulsa firm of Joyce & Paul PLLC announces that **David W. Lawson** and **Katie A. Sattre** have joined the firm as associates, and **Leanne G. Barlow** has joined the firm as of counsel. Mr. Lawson is licensed and practiced as an architect in Tulsa for six years. He earned his undergraduate degree in architecture from OSU in 1998 and his J.D. from the OU College of Law in 2007, where he graduated with honors. He focuses his practice on professional liability

and construction, as well as general civil litigation. Ms. Sattre received her J.D. and natural resources, energy and environmental law certificate from TU in 2007, and her B.A. in honors political science and a minor in psychology from OSU in 2004. She will concentrate her practice on general business matters, regulatory issues and civil litigation. Ms. Barlow is admitted to practice in Texas and in Oklahoma. She received her B.A. from Southern Methodist University in 1988 and her J.D. in 1992 from Baylor University School of Law. Ms. Barlow was previously a partner in the firm of Barlow & Barlow PC; an associate with Hardy, Atherton and Boyd PC; a partner with Pruitt, Garland & Johnson PC; and a solo practitioner, all in Tyler, Texas. Her practice is focused on estate planning, preparation of wills and trust, probate and guardianships.

The law firm of Hall, Estill, Hardwick, Gable, Golden & Nelson PC announces the addition of three new associates in the Tulsa office. **Robert L. Betts** begins his second career with the firm after receiving a J.D. from the TU College of Law. Mr. Betts also holds a Ph.D. in analytical chemistry from Texas A&M. He was formerly with ManTech Environment Research & Shaw Environmental providing chemical analysis services to the Environmental Protection Agency. His areas of practice will be environmental and intellectual property. **J. Terrell Siegfried** received his B.B.A. from TU and his J.D. from the Notre Dame University School of Law. His areas of

practice include bankruptcy, corporate/commercial, tax, trusts and estates. **Brandon B. Rule** received his B.A. from TU and his J.D. from George Mason University School of Law. His areas of practice are litigation, telecommunications, tort and insurance defense.

Paul T. Boudreaux has joined The Richardson Law Firm as a partner. Mr. Boudreaux practices in the areas of civil and business litigation, insurance, bad faith, negligence, medical malpractice, premises and products liability, casualty and fire loss, personal injury, employment and civil rights law, environmental and toxic torts, arbitrations and mediations. His new location is 6450 S. Lewis Ave., Suite 300, Tulsa, 74136; (918) 492-7674; Fax: (918) 493-1925.

The Norman law firm of Barnum, Clinton & Daron is pleased to announce that **Amanda Alley** has joined the firm as an associate. Ms. Alley obtained her J.D. from the University of Colorado School of Law, May 2007, and is a 2003 graduate of OU, with honors, B.B.A., finance. Ms. Alley will focus her practice in the areas of workers' compensation defense, employment and other business litigation matters.

Hartzog Conger Cason & Neville announces that **Rick L. Warren** has joined the firm. Mr. Warren received his J.D. with honors from the OU College of Law, where he was a member of the American Indian Law Review and listed on the dean's honor roll. He also holds a bachelor of business

administration with special distinction from OU. Before joining Hartzog Conger Cason & Neville, Warren was an associate at Hall Estill in Oklahoma City.

Derryberry & Naifeh LLP announces that **Pete G. Serrata III** and **Todd L. Grimmet** have become associated with the firm. Mr. Serrata received his J.D. from OCU School of Law in 2006 and holds a bachelor of arts degree in political science from the University of North Texas. Mr. Serrata's legal career comes after eight years in the U.S. Army Reserve where he served as a non-commissioned officer in the intelligence field. He practices in the areas of insurance coverage and commercial litigation. Mr. Grimmet received his J.D. from the OU College of Law in 2006 and holds a bachelor of science degree in business administration from OSU. Upon graduation, he entered into private practice in the Oklahoma City area focusing on business and corporate law. Mr. Grimmet will continue to concentrate his practice in the areas of business and corporate law, particularly in the areas of formation, taxation and transactions. A portion of his practice is also devoted to estate planning and probate.

Robinett and Murphy announces that **Melissa G. Holderby** and **Daniel Zemke** have joined the firm as associates. Ms. Holderby is a 2002 graduate of TU, earning a bachelor's degree in literature and art and a minor in art history. She received her J.D. from OU in 2005, where she served on the Oklahoma Journal of

Law and Technology. Her practice areas include criminal defense, civil litigation and family law. Mr. Zemke earned his bachelor's degree in American history from the University of San Francisco in 1991, his master's degree in education from Stanford University in 1997 and his J.D. from TU in 2004. During law school, he was managing editor of the Tulsa Journal of Comparative and International Law and a member of the American Trial Lawyers Association Competition Team for 2002. His practice areas include family law, real estate and civil litigation. Both Ms. Holderby and Mr. Zemke may be reached at 624 S. Boston Ave., Suite 900, Tulsa, 74119; (918) 592-3699.

Matthew McDevitt has become an associate with the Oklahoma City firm Hornbeek, Vitali & Braun PLLC. He received his bachelor of arts degree in political science from Texas A&M University and his J.D. from OCU School of Law in 2004. Mr. McDevitt will concentrate his practice on insurance defense with the firm's litigation department. He may be reached at 3711 N. Classen Blvd., Oklahoma City, 73118; (405) 236-8600; mcdevitt@hvblaw.com.

At The Podium

Graydon Dean Luthey Jr., attorney for Hall, Estill, Hardwick, Gable, Golden & Nelson PC, recently spoke at the annual con-

ference of the Oklahoma Indian Gaming Association addressing current legal issues in Oklahoma gaming. Specifically, Mr. Luthey spoke on the drafting process of regulations on technical standards, minimum internal control standards and classification standards for Class II gaming. Mr. Luthey has been with Hall Estill since 1992 and is an adjunct full professor of law at TU.

Hall, Estill, Hardwick, Gable, Golden & Nelson PC attorney **Amir M. Farzaneh** was the featured speaker at the August meeting of the Central Oklahoma Association of Legal Assistants. He provided attendees with an update on current legal issues involving immigration law. Mr. Farzaneh is a frequent speaker on immigration law issues and serves as newsletter co-chair and editor for the Immigration Committee of the ABA Section of Litigation. His practice areas include employment-based immigration, family-based immigration, immigrant and non-immigrant visas, immigration court representation and litigation.

Kimberly Lambert Love, a shareholder in the firm of Titus Hillis Reynolds Love Dickman & McCalmon, recently gave a presentation on retaliation law at the 25th annual Multi-State Labor & Employment Law Seminar sponsored by Tulane University Law School and the Virginia Bar Association. The seminar took place in Colonial Williamsburg, Va., June 27-30.

T. Douglas Stump was a recent speaker at an employment law seminar

hosted by the Learning Lab of the Link America Corporation in Tulsa. Mr. Stump's topic was "Employment-Based Immigration Law and Analysis of the Oklahoma Taxpayer and Citizenship Protection Act of 2007." Mr. Stump was also a guest speaker at the August meeting of the Oklahoma Associated Builders and Contractors, where his topic focused on navigating employer pitfalls of the Oklahoma Tax Payer and Citizenship Protection Act and an update on similar legislation deemed unconstitutional by recent federal court decisions throughout the United States. Mr. Stump is one of the 21 elected directors governing the 10,000-member American Immigration Lawyers Association and maintains offices in Oklahoma City and Tulsa.

Tracy Pierce Nester, with McGivern, Gilliard & Curthoys in Oklahoma City, was the featured speaker at the September meeting of the Western Oklahoma Human Resources Organization. Ms. Nester spoke on various human resources and employment-related topics, including hiring, firing, discrimination and retaliatory discharge. Ms. Nester provided HR managers with practical advice for handling personnel issues on a day-to-day basis, as well as how to proceed when an employee files a charge with the EEOC or files suit for wrongful termination.

Oklahoma City attorneys **Mark Hanebutt** and **Nathan Weems** served as moderators for the Constitution Day debate, "American Flag Desecration: Should We Amend Our Constitution?"

The debate was held in conjunction with the OCU politics of law course, which is taught through the university's political science department by OBA member **Jerry Magill**.

At the Defense Research Institute's "Strictly Automotive" product liability seminar in San Diego on Sept. 6-7, **Jeff Curran** presented an ethics lecture and was on the steering committee in charge of planning the meeting. Mr. Curran recently finished his year as the chairperson of the ABA/TIPS Automobile Law Committee, and is now a member of the TIPS Editorial Board.

He is of counsel at Jennings Cook & Teague in Oklahoma City and maintains a practice mainly in product liability, commercial litigation, insurance litigation, and entertainment and sports law.

How to place an announcement: If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award or given a talk or speech with statewide or national stature, we'd like to hear from you. Information selected for publication is printed at no cost, subject to editing and printed as space permits. Submit news items (**e-mail strongly preferred**) in writing to:

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Articles for the Nov. 3 issue must be received by Oct. 15

Daniel Stafford Bassett Jr. of Bartlesville died Sept. 23. He was born June 28, 1920, in Eastland, Texas. He graduated from Bartlesville High School in 1939. **After Pearl Harbor, he was drafted into the Army and became Staff Sergeant. In 1944 he was sent to Europe and joined the 507th Parachute Infantry Regiment, 82nd Airborne Division, arriving in France shortly after the D-Day invasion. Later, he and the men of the 507th jumped into and fought the Battle of the Bulge and continued on until the end of the war.** After returning home, he graduated from the OU College of Law and practiced law in Bartlesville for more than 50 years, including serving as city attorney for the city of Dewey for more than 20 years. After retiring in 2002, he and his wife moved to Oklahoma City to be closer to family. He enjoyed all kinds of do-it-yourself activities, especially taking family trips in the RV.

Steven Eaton Moore of Oklahoma City died Sept. 22. He was born March 24, 1946, in Sayre and was raised in Altus. He graduated from Altus High School and received a bachelor's degree in business administration from OU in 1968. He earned his law degree from OU in 1971. **In addition to his schooling, he served as an officer in the U.S. Army Reserve from**

1968-1974. Early in his legal career, he served as an assistant attorney general for the state of Oklahoma. In 1974, he joined OG&E as a staff attorney. In May 1996, he was named chairman of the board, president and chief executive officer of OG&E Energy Corporation. He was also active in many community organizations, serving as chairman of the Oklahoma City Chamber of Commerce and was on the boards at United Way of Central Oklahoma, Oklahoma City University and INTEGRIS Health Inc. He loved hunting and being at the family farm in Guthrie. He was an active member of Chapel Hill United Methodist Church for over 25 years. Memorial contributions may be made to Chapel Hill United Methodist Church or the OU Foundation.

William Eugene (Gene) Savage of Bartlesville died Sept. 3. He was born Jan. 15, 1925, in Hartshorne. After high school graduation, he attended Phillips University in Enid and OU, where he received a bachelor's degree and an LL.B. degree. He was a senior attorney in the legal department at Phillips Petroleum Co. and retired on July 1, 1985, having performed legal work in Oklahoma City; McGregor, Texas; and Bartlesville for 36 years. Since retirement, he enjoyed traveling, Concert Time music,

Tulsa Philharmonic, Tulsa Ballet, Tulsa Opera and OK Mozart. He was a member of Chaine des Rotisseurs, a food and wine society, as well as Societe Mondiale du Vin. Memorial donations may be made in his name to the OK Mozart Festival, P.O. Box 2344, Bartlesville, 74005.

Tom Tate of Proctor died Aug. 9. He was born May 6, 1936, in Fairfax. He graduated from Fairfax High School and earned a degree in animal science from OSU in 1957. While at OSU, he served as the state 4-H president and the OSU Student Senate president. He received his J.D. from the OU College of Law in 1960. He represented Osage County in the Oklahoma Legislature for two terms immediately after graduating law school. Ranching was his passion, and when he wasn't working cattle, he was a world traveler. He was a member of the First United Methodist Church of Tahlequah. Among his survivors is his stepson, OBA member Jasen Corns of Jenks. Memorial contributions may be made to the Tom Tate Scholarship Fund, NSU Foundation, NSU Alumni Association, 600 N. Grand, Tahlequah, 74464; (800) 722-9614; or the OU Foundation or the OSU Foundation.

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AV-RATED OKLAHOMA CITY FIRM seeks two attorneys. One should have 2-5 years experience, and must have excellent writing skills and a strong academic background. The other should have at least 5 years experience, and must have trial experience. Both positions will emphasize in civil rights, employment law and insurance defense cases. Please submit resume and salary requirements to Box "D," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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POSITIONS AVAILABLE

GROWING OKC LITIGATION FIRM committed to highest quality legal services needs associate with 5 to 7 years experience to handle insurance defense matters. Must have excellent academic record and references. Please send resume and writing sample to Box "Z," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152.

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ABOWITZ, TIMBERLAKE & DAHNKE, P.C., an AV rated downtown OKC law firm, is seeking a motivated lawyer with at least three years experience in civil trial practice. Applicant should be energetic, write well, and be willing to devote the time and effort necessary to provide the best legal services to our clients. Send Resume to P.O. Box 1937, Oklahoma City, OK 73101.

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POSITIONS AVAILABLE

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INVESTIGATOR POSITION AVAILABLE. Office of the General Counsel; Oklahoma Bar Association. Seeking experienced investigator. Bachelor's degree is preferred. Responsibilities include conducting interviews; writing reports; preparing subpoenas; taking statements; conducting complex, sensitive, confidential investigations; assisting in presentation of investigations; and testifying and assisting prosecutors in disciplinary proceedings. Knowledge and use of WordPerfect helpful. Must have good oral and written communication skills. Submit resume to the Office of the General Counsel, P.O. Box 53036, Oklahoma City, OK 73152.

AV NW OKC FIRM engaged in litigation, business, and estate planning, seeking an attorney with 3-15 years of experience with proven ability to handle own caseload with strong research/writing skills. Send resume, writing sample and salary requirements to lawfirmad@gmail.com.

AV RATED DOWNTOWN OKC FIRM is seeking a litigation attorney with strong research and writing skills, 2-5 years of experience, and excellent academic credentials. Submit resume and writing samples in confidence to: Office Administrator - Elias, Books, Brown & Nelson, 211 N. Robinson, Suite 1300, 2 Leadership Square, Oklahoma City, Oklahoma 73102-7149.

POSITIONS AVAILABLE

FSA CONTRACT PARALEGAL POSITION in United States Attorney's Office, Asset Forfeiture Program, Oklahoma City. Paralegal certificate required plus litigation, legal research and writing experience. Full-time \$25.29 per hour. Visit our website at www.forfeituresupport.com to apply online to: Ms. Vivien O'Connor at voconnor@forfeituresupport.com. A writing sample, resume and transcripts will be requested.

ATTORNEY NEEDED for AV rated criminal defense firm, experience preferred, excellent communication, writing and analytical skills required, Send replies to Box "U", Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

BARBER & BARTZ, P.C., an AV rated downtown Tulsa law firm, has an immediate opening for an associate with 1-3 years experience in civil trial practice and family law. Competitive salary and benefits for commensurate qualifications and experience. Applicants should send resume and salary requirements to Scott Villines at svillines@barberbartz.com; or by mail to 525 S. Main St., Ste 800, Tulsa, OK 74103.

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Banned Book Week

By Margaret Travis

Banned Book Week was Sept. 29 — Oct. 6 this year. I'm not much of an activist. I don't get involved in causes. I go about my business, doing what I have to do. I help my clients, take my kids to school and hope that they aren't too screwed up when I get through with them.

But. According to the people who want to ban books, I AM A REBEL!

I'm surprised at the number of "challenged" books that I've read. I've not read a whole lot that are on the "most challenged" list this year, but overall I'm on a roll.

Teenaged sex books seem to have hit a nerve. Heaven forbid we should teach our children about sex. Or their bodies. Let's not give them tools to deal with all these feelings they may be having but not quite knowing what to do about them. Let's not have any avenues to discuss these things with our children. Cause heaven knows they would NEVER have any of these ideas All. On.Their.Own.

"Of Mice and Men" and "The Adventures of Huckleberry Finn" have fallen from the list of top ten "challenged" books this year. Of the top 100, I've probably read 75 percent of them. If I'd known when I was a teenager there was so much sex and violence and prurient stuff in them, I'd have paid more attention. Instead, as a teenager, I called them GOD.AWFUL. BORING

and moved to something else. Or I bought the Cliff Notes and tried to bluff. Or I watched the movie and tried to wing it in class. I mean seriously, if I'd known there was so much sex and violence and dirty words in some of these books, I really would have tried harder to read the ones I didn't read.

Some I totally fail to understand. "To Kill A Mockingbird" is my all-time favorite book. It tells a poignant story and is beautifully written. Harper Lee can turn a phrase in a way I can only dream about. It is the story I wish I'd written, if Harper Lee hadn't already written it. And someone (actually several someones) want to ban it, pulling it from the library. Keep other people from reading it. You mean everyone doesn't keep a copy of it sitting on their bedside?

And the kids books? They too baffle me.

The Series of Unfortunate Events books are there. As are the Harry Potter Books. Both series are great kids books.

Captain Underpants has caught the wrath of someone. Do you suppose it's because it's got the word underpants, right in the title? I have read the Captain Underpants series of books. I own the Captain Underpants series of books.

I will admit I haven't yet read the "Captain Underpants and the Preposterous Plight of the Purple Potty

People," but I might just run out and buy it this afternoon. Because while my daughter has outgrown the Captain Underpants series of books, my son is just entering Dave Pilkey's realm of influence.

Those books are funny. In that stupid, little kid, grossed out sort of way that kids like so well. They talk about poop and farts and wedgies and boogers. George and Harold made my daughter laugh out loud. They have this stupid thing in it called "Flip-O-Rama" where you put your hand on one page and turn the other page and it looks like things are moving; usually doing something inappropriate, punching someone or poking someone in the eye.

It's stupid. It's exaggerated. The kids know it's stupid and exaggerated. They know it's making fun of school and their parents and their teachers and rules and that it ISN'T REAL. That's the whole point.

I have a child who doesn't read much. Her reading skills are poor. Her comprehension is worse. What she needs to do is practice her reading. And the last thing in the world she wants to do is actually read. She would rather - talk on the phone, play with her brother, watch TV, play on the computer or poke herself in the eye with a fork - than read a book.

But she read the Captain Underpants series of books. And I don't care how inappropriate someone finds them or their talk of boogers and poop and wedgies, I'd pay my weight in gold for something else that she will volunteer to read.

Ms. Travis practices in Oklahoma City.

